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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064–AE25

Record Retention Requirements

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (the "FDIC") is adopting a final rule that implements section 210(a)(16)(D) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act" or the "Act"). This statutory provision requires the promulgation of a regulation establishing schedules for the retention by the FDIC of the records of a covered financial company (*i.e.*, a financial company for which the necessary determination has been made for the appointment of the FDIC as receiver pursuant to Title II of the Dodd-Frank Act) as well as for the records generated or maintained by the FDIC that relate to its exercise of its Title II orderly liquidation authorities as receiver with respect to such covered financial company.

DATES: This final rule is effective on July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Legal Division: Elizabeth Falloon, (703) 562–6148; Joanne W. Rose, (703) 562–2175. Division of Resolutions and Receiverships: Teresa Franks, (571) 858–8226; James Horgan, (917) 320–2501; Manuel Ramilo, (571) 858–8227. Office of Complex Financial Institutions: Charlton R. Templeton, (202) 898–6774. Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

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I. Policy Objectives

In enacting Title II[1] of the Dodd-Frank Act ("Title II"), Congress provided for the appointment of the FDIC as receiver for a financial company[2] in order to conduct an orderly liquidation of the financial company if, among other things, resolution of the financial company under bankruptcy (or other applicable insolvency regime) would have serious adverse effects on U.S. financial stability. Title II confers upon the FDIC as the appointed receiver for a financial company (after appointment of the receiver, the company is referred to as a covered financial company)[3] certain powers and authorities to effectuate an orderly liquidation of the covered financial company in a manner that is consistent with the statutory objectives. As part of this statutory undertaking, Congress foresaw the necessity for the FDIC and the public at large to have access to the records that would document the actions of the financial company prior to the FDIC's appointment as receiver and the records of the FDIC itself, in its receivership role. This regulation implements that statutory mandate in a manner promoting consistency and transparency in the maintenance of these records.

II. Background

Upon appointment of the FDIC as receiver for a financial company, the FDIC succeeds to all rights, titles, powers and privileges of the financial company, including title to the books and records of the financial company.[4] In addition, the FDIC necessarily will generate its own records in connection with its appointment as receiver and in connection with exercising the authorities conferred upon it by Title II.

Section 210(a)(16)(D) of the Dodd-Frank Act[5] requires the FDIC to prescribe such regulations and establish such retention schedules as are necessary to maintain two categories of records: The records of a financial company that were in existence at the time the FDIC is appointed as its receiver, as well as the records generated by the FDIC in connection with its appointment as receiver and in connection with its exercise of its orderly liquidation authorities. Section 210(a)(16)(D) of the Act provides guidance as to the types of records that must be retained. Specifically, section 210(a)(16)(D)(i) of the Act requires that the FDIC prescribe the regulations and establish schedules for retention of these records with due regard for the avoidance of duplicative record retention and for the evidentiary needs of the FDIC as receiver and for the public. Once such regulations and retention schedules are prescribed, section 210(a)(16)(D)(ii) prohibits the destruction of records to the extent that they must be retained in accordance with the promulgated regulations and retention schedules.

Section 210(a)(16)(D)(iii) of the Act, entitled "Records Defined," describes the forms of documentary material addressed in the regulation and statute, specifying that any document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record is included. In addition, that section specifies that records inherited from the failed company are those that were generated or maintained by the covered financial company in the course of and necessary to its transaction of business.

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376 (2010) and codified at 12 U.S.C. 5301 *et seq.* Title II of the Dodd-Frank Act is codified at 12 U.S.C. 5381–5394.

[2] *See* 12 U.S.C. 5381(a)(11) (defining financial company) and the regulations promulgated thereunder.

[3] A "covered financial company" is a financial company (other than an insured depository institution) for which the necessary determinations have been made for the appointment of the FDIC as receiver. 12 U.S.C. 5381(a)(8).

[4] 12 U.S.C. 5390(a)(1)(A).

[5] 12 U.S.C. 5390(a)(16)(D).

On October 21, 2014, the Board of Directors of the FDIC approved a notice of proposed rulemaking entitled "Record Retention Requirements," promulgated pursuant to section 210(a)(16)(D) of the Dodd-Frank Act. The proposed rule was published in the **Federal Register** on October 24, 2014 with a 60-day comment period that ended on December 23, 2014.[6] In keeping with the statutory mandate, the proposed rule established retention schedules for both records inherited by the FDIC as receiver from the covered financial company and records created by the FDIC as receiver for the covered financial company. The retention schedule for records inherited from the covered financial company was modeled after the treatment of records of a failed insured depository institution pursuant to a regulation entitled "Records of Failed Depository Institutions"[7] (the "FDIA records rule"). The FDIA records rule addresses the retention of records of failed insured depository institutions pursuant to section 11(d)(15)(D)[8] of the Federal Deposit Insurance Act.

Generally, the proposed rule required that records inherited from a covered financial company that were created less than ten years before the appointment of the FDIC as receiver be retained for not less than 6 years following the date of the appointment of the receiver. Under the proposed rule, records created by the FDIC in connection with the exercise of its orderly liquidation authority as receiver for a covered financial company were required to be maintained at least six years following the termination of the receivership, regardless of when they were created.

III. Comments to the Proposed Rule

Two comment letters were submitted in response to the proposed rule, both from individuals.

A. Retention Periods

Both commenters stated that the retention periods in the proposed rule were too short, and one of the commenters suggested that all records be kept indefinitely for "analytical purposes." The requirement in section 210(a)(16)(D)(i) of the Dodd-Frank Act that retention schedules be established suggests that Congress expected that the FDIC would exercise its discretion to identify some appropriate period of time as a minimum period of time to retain records.[9] The periods identified in the proposed rule were based upon the experience of the FDIC as receiver for insured depository institutions. Thus, as noted in the preamble to the proposed rule, the FDIC prescribed minimum retention periods in the proposed rule, recognizing that the FDIC may, as it has in the past with regard to the records of failed insured depository institutions, retain certain records for longer periods of time or even indefinitely for analytical, historical, or other purposes. The proposed rule expressly provided for the establishment of policies that are consistent with the minimum schedules established in the proposed rule. With the changes more fully discussed below, the FDIC believes that the minimum retention periods provided in the final rule properly fulfill the intent of section 210(a)(16)(D) of the Act and comport with prudent record retention principles.

B. Reasonably Accessible

One of the commenters objected to the use of the phrase "reasonably accessible" in the definition of "documentary material," which forms the basis for the types of materials that constitute a record for purposes of the proposed rule. The commenter suggested that if a party in litigation is willing to pay for the recovery of electronically-stored information, such a record should be made available. Unfortunately, this suggestion does not reflect the reality of record storage and accessibility.

A large component of record storage expense is the cost of maintaining legacy systems that house records, as well as the cost of retrieving and identifying possible relevant information from those systems and sources. To comply with the commenter's suggestion, all records systems, no matter how out-of-date or incompatible with the FDIC's systems, would have to be indefinitely maintained as accessible, together with the technological and staffing capacity to use these systems to retrieve obsolete records. This indefinite maintenance would be attempted on the remote chance that one record, or a portion thereof, stored on a legacy system would be requested by a litigant. The cost to indefinitely maintain an entire legacy system that could house an arguably relevant document would be impossible to calculate and to bill to a litigant. The "reasonably accessible" discovery standard requires maintenance of these systems where it is reasonable and practicable to do so. (See discussion on the "reasonably accessible" discovery standard used in the definition of documentary material in the section-by-section analysis.) Accordingly, the term "reasonably accessible" is included in the definition of "documentary material" in the final rule.

C. Bridge or Subsidiary Records

One of the commenters objected to the exclusion from records of documentary material generated or maintained by a bridge financial company or a subsidiary or affiliate of a covered financial company. This exclusion was included in paragraph (d)(3)(ii) of the proposed rule. As required by the statute, the proposed rule addresses only the records of a covered financial company and the records of the FDIC as receiver of such covered financial company. Retention of the records of any other legal entity, including a covered financial company's subsidiaries or affiliates, is beyond the scope of the requirements of the statute. Although bridge financial company records and subsidiary records are not expressly subject to the proposed rule, records generated by the FDIC receiver in its oversight of a bridge financial company, or records sent to the FDIC receiver by the bridge's management and maintained by the FDIC in the course of such oversight would be subject to the applicable minimum retention requirements of the proposed rule. Accordingly, no change was made to the final rule in this respect and the exclusion is found in paragraph (e)(2)(ii) of the final rule.

IV. The Final Rule

A. General

In response to the comment letters and pursuant to internal agency consideration, the FDIC made certain changes to the final rule. These changes are discussed below.

The proposed rule has been revised to eliminate the set retention period for records created by the FDIC in connection with its appointment as receiver for a covered financial company and in connection with its exercise of its Title II responsibilities. The proposed rule provided for a retention period for these records of not less than six years after the date of the termination of the related receivership.

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[6] 79 FR 63585 (October 24, 2014).

[7] 12 CFR 360.11, 78 FR 54373 (September 4, 2013).

[8] 12 U.S.C. 1821(d)(15)(D).

[9] Section 210(a)(16)(D)(ii) of the Act provides that unless otherwise required by applicable Federal law or court order, the FDIC may not, at any time, destroy any records that it is required to retain under Section 210(a)(16)(D)(i) of the Act and the regulations promulgated thereunder.

The change in the final rule requires the FDIC to retain these records indefinitely to the extent that there is a present or reasonably foreseeable future evidentiary or historical need for them on the part of the FDIC or the public, but in no event less than six years from the termination of the related receivership. This is in keeping with the suggestions of the commenters who objected to the imposition of specific retention periods, and is consistent with the statutory emphasis on the "expected evidentiary needs of the Corporation[10] . . . and the public" as required by section 210(a)(16)(D) of the Act. In addition, the paragraph clarifies that in the case of receivership records that are subject to a litigation hold,[11] a Congressional subpoena, or that relate to an investigation by Congress, the United States Government Accountability Office, or the FDIC's inspector general, such records will be retained pursuant to the conditions of the hold, subpoena, or investigation.

Two definitions have been added and appear in the final rule: "Inherited records" in paragraph (b)(2) and "receivership records" in paragraph (b)(3). Although the proposed rule separately addressed these two kinds of records, the wording used to describe these records ("records of a covered financial company for which the Corporation is appointed receiver" and "records of the Corporation as receiver for a covered financial company") was unnecessarily repetitive. The use of the defined terms, which are both accurate and descriptive, results in more succinct language in the final rule.

Inherited records may be transferred to a third-party transferee in connection with a transfer, acquisition, or sale of a covered financial company's assets and liabilities. Paragraph (b)(4) of the proposed rule has been slightly expanded in the final rule (and is now paragraph (c)(3) of the final rule). The final rule requires that in order for the transfer of inherited records to satisfy the record retention requirements of the final rule and section 210(a)(16)(D) of the Act, the transferee must agree not only to maintain the inherited records for at least six years from the date of appointment of the FDIC as receiver for the covered financial company, as provided in the proposed rule, but must also agree that, prior to the destruction of any such inherited records, it will provide the FDIC with notice and the opportunity to cause the return of such inherited records to the FDIC.

B. Section-by-Section Analysis

1. Scope and Definitions

Paragraph (a) sets forth the scope of the final rule. It makes clear that the final rule applies to the two categories of records addressed by section 210(a)(16)(D) of the Act, *i.e.,* those records of a financial company that are inherited by the FDIC upon its appointment as receiver for the covered financial company and those records generated by the FDIC in connection with its appointment as receiver and the exercise of its orderly liquidation authorities.

Paragraph (b) provides definitions for terms used in the final rule that are not otherwise defined in the Dodd-Frank Act. Part 380 of title 12 of the Code of Federal Regulations concerns the FDIC's orderly liquidation authorities conferred by Title II of the Dodd-Frank Act. Section 380.1 contains the definition of the term *covered financial company* which is defined as a *financial company* for which the necessary determinations have been made for the FDIC to be appointed receiver and the term *financial company.*[12] Thus it is unnecessary to include definitions of the terms *covered financial company* and *financial company* in the final rule.

Paragraph (b) sets forth three definitions. The first is that of *documentary material.* This definition follows closely the text of section 210(a)(16)(D)(iii) of the Act and describes the universe of forms and formats in which materials subject to the final rule may appear, including books, paper, maps, photographs, microfiche, microfilm, or writing regardless of physical form or characteristics and includes any computer or electronically-created data or file. The definition of documentary material included in the final rule is slightly different from the definition included in the proposed rule to make it clearer that the term documentary material covers material regardless of the physical form or characteristics of the material and includes any computer or electronically-created data or file.

The definition of documentary material clarifies that only documentary material that is reasonably accessible is included in the scope of the final rule. This reflects the policy behind Federal Rule of Civil Procedure 26(b)(2)(B), which provides that a party from whom discovery is sought need not provide electronically-stored information from sources that are not reasonably accessible because of undue cost or burden. For example, a party may be excused from restoring electronically-stored information from aging back-up tapes in order to produce it in response to a discovery request. Thus, the use of the phrase "reasonably accessible" would align the concept of material subject to the final rule with the discovery standard and would protect the FDIC as receiver from incurring inordinate expenses associated with restoring or maintaining the legacy system of a covered financial company in order to extract documentary material from those systems that is not otherwise needed by the FDIC to carry out its receivership functions.

Two definitions have been added and appear in the final rule in paragraphs (b)(2) and (b)(3): *Inherited records* and *receivership records.* Although the proposed rule separately addressed these two kinds of records, they were described rather than defined ("records of a covered financial company for which the Corporation is appointed receiver" and "records or the Corporation as receiver for a covered financial company"). The final rule uses defined terms for conciseness and clarity, as discussed above.

2. Inherited Records

Paragraph (b)(2) of the final rule defines, and addresses the retention schedule for, inherited records. Under the final rule the term *inherited record* means documentary material of a covered financial company that existed on the date of the appointment of the FDIC as receiver for such financial company and was generated or maintained by the covered financial company in the course of, and necessary to, the transaction of its business. The final rule provides additional guidance with respect to determining whether documentary material was generated or maintained by the covered financial company in the course of, and necessary to, the transaction of its business and therefore constitutes an inherited record that is subject to the retention requirements of the final rule. The final rule sets forth three factors which the FDIC will consider in determining whether documentary material, as defined in paragraph (b)(1), was generated or maintained by the covered financial company in the course of, and necessary to, the transaction of its business.

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[10] The Dodd-Frank Act uses the term "Corporation" to refer to the FDIC.

[11] A litigation hold (also known as a "preservation order", a "legal hold" or a "hold order") is a stipulation requiring a party to preserve all data that may relate to a legal action involving that party. When in place, it requires that parties preserve records when they learn of pending or imminent litigation, or when litigation is reasonably anticipated. This requirement ensures that documentary material will be available for the litigation's discovery process.

[12] 12 U.S.C. 5381(a)(11).

The first factor is whether the documentary material was generated or maintained in accordance with the covered financial company's own practices and procedures (including the document retention policies of the covered financial company) or pursuant to standards established by the covered financial company's regulators. In general, a company's own policies and procedures will reflect the significance of its records to its business and regulatory requirements and the importance of documentary material generated or maintained by the company. Thus, the FDIC will consider whether documentary material was created or maintained in accordance with the covered financial company's own practices and procedures (including its document retention policies) when determining whether specific documentary material is an inherited record for the purposes of section 210(a)(16)(D) of the Act and the final rule. Likewise, the FDIC will consider whether documentary material was generated or maintained pursuant to standards imposed by the covered financial company's regulators when determining whether specific documentary material is an inherited record for the purposes of section 210(a)(16)(D) of the Act and the final rule.

The second factor is whether the documentary material is necessary for the FDIC to carry out its obligations as receiver for the covered financial company. This inquiry would permit the classification of documentary material as an inherited record if it is necessary for the FDIC to maintain such documentary material in order to carry out its functions as receiver for the covered financial company, for example, where the documentary material is necessary in order for the FDIC to (i) transfer the covered financial company's assets or liabilities, (ii) assume or repudiate the covered financial company's contracts, (iii) determine claims against the receivership of the covered financial company, or (iv) collect obligations owed to the covered financial company.

The third factor is whether there is a present or reasonably foreseeable evidentiary need for such documentary material by the FDIC as receiver for the covered financial company or the public. The wording of this factor closely follows the wording of section 210(a)(16)(D)(i)(II) of the Dodd-Frank Act. That section emphasizes that the FDIC must retain documentary materials that have evidentiary value to the FDIC as receiver and to the public. The final rule reflects this statutory direction and makes it clear that in making any determination of future evidentiary value a "reasonably foreseeable" standard should be applied.

Paragraph (c)(1) of the final rule establishes the record retention schedule for inherited records. The time period included in the final rule is modeled on the time period contained in the FDIA statutory provision and the FDIA records rule.[13] Under the final rule, the FDIC shall retain any inherited record of a covered financial company that was created fewer than ten years before the date of the appointment of the FDIC as receiver for the covered financial company for a period of no less than six years from the date of such appointment, provided however that an inherited record shall be retained indefinitely so long as it is (i) subject to a litigation hold imposed by the FDIC, (ii) subject to a Congressional subpoena or relates to an ongoing investigation by Congress, the United States Government Accountability Office, or the FDIC's Inspector General, or (iii) an inherited record that the FDIC has determined is necessary for a present or reasonably foreseeable evidentiary need of the FDIC or the public. Therefore, similar to the FDIA final rule, paragraph (c)(1) of the final rule expressly provides that the FDIC will maintain inherited records subject to a litigation hold imposed by the FDIC in order to ensure retention of documentary material that is relevant to ongoing litigation matters. The final rule goes farther than the FDIA records rule, however, by expressly requiring the indefinite maintenance of inherited records subject to a Congressional subpoena or that relate to an ongoing investigation by Congress, the United States Government Accountability Office, or the FDIC's Office of Inspector General; or that otherwise have been deemed by the FDIC as necessary for a present or reasonably foreseeable evidentiary need of the FDIC or the public.

Paragraph (c)(2) provides a non-exclusive list of examples of material that would constitute inherited records to provide additional guidance and clarity with respect to the sorts of documentary material that are subject to the retention requirements of the final rule. Included examples are correspondence; tax forms; accounting forms and related work papers; internal audits; inventories; board of directors or committee meeting minutes; personnel files and employee benefits information; general ledger and financial reports; financial data; litigation files; loan documents including records relating to intercompany debt; contracts and agreements to which the covered financial company was a party; customer accounts and transactions; qualified financial contracts and related information; and reports or other records of subsidiaries or affiliates of the covered financial company that were provided to the covered financial company.

3. Transfer of Records

Paragraph (c)(3) of the final rule addresses the transfer of inherited records to a third party (including a bridge financial company) that acquires assets or liabilities of the covered financial company from the FDIC as receiver for the covered financial company. In a resolution of a covered financial company, the FDIC may transfer inherited records to the custody of a third party, including a bridge financial company, in connection with the transfer, acquisition, or sale of assets or liabilities of the covered financial company to such third party. Paragraph (c)(3) of the final rule provides that such a transfer will satisfy the records retention obligations under paragraph (c)(1) and section 210(a)(16)(D) of the Act so long as the transferee agrees, in writing, that it will maintain the inherited records for at least six years from the date of the appointment of the FDIC as receiver for the covered financial company unless otherwise notified in writing by the FDIC. In addition, the third party must agree that prior to the destruction of any such inherited records it will provide the FDIC with notice and the opportunity to cause return of such inherited records to the FDIC as receiver. The final rule differs from the proposed rule in that it adds the language emphasizing that prior to the destruction of any transferred records such transferee will be required to give the FDIC the opportunity to cause the return of such records to the FDIC as receiver.

4. Receivership Records

In fulfilling its duties and responsibilities as receiver for a covered financial company pursuant to Title II of the Dodd-Frank Act, the FDIC itself would generate, receive, and maintain documentary material in connection with and after its appointment as receiver, records that would be separate and apart from the inherited records. Section 210(a)(16)(D) of the Act specifically requires that the FDIC develop policies to maintain the documents and records of the FDIC generated in exercising its authorities under Title II to assure that receivership records would be available for review following the exercise of the extraordinary authority granted to the FDIC under Title II. Paragraph (b)(3) sets forth the definition of receivership records. Receivership records are defined to include documentary material that is generated or maintained by the FDIC in accordance with the policies and procedures of the FDIC (including the document retention policies of the FDIC) that relates to the FDIC's appointment as receiver for a covered financial company or the exercise of its authorities as receiver for the covered financial company under Title II. Receivership records would include documentary material generated or maintained by the FDIC as receiver with respect to its appointment under section 202 of the Dodd-Frank Act,[14] as well as documentary material generated or maintained by the FDIC as receiver for a covered financial company in connection with the exercise of its orderly liquidation authorities. This definition makes it clear that only documentary material that is related to the duties and functions of the FDIC as receiver and the exercise of its orderly liquidation authorities is subject to the retention requirements of section 210(a)(16)(d) of the Dodd-Frank Act.

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[13] The FDIC has been required to retain records inherited from failed insured depository institutions for a minimum of six years since the enactment of the FDIA provision which was added to the Federal Deposit Insurance Act by section 212(a) of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) in 1989 (Pub. L. 101–73).

To be a receivership record the documentary material must be generated or maintained in accordance with policies and procedures of the FDIC, including the record retention policies and procedures of the FDIC. The FDIC will look to its internal procedures and guidance for generating and maintaining all of its own records, including corporate and bank receivership records, and use them as a guideline to determine whether documentary material generated or maintained as receiver for a covered financial company comport with these procedures and, thus, constitute receivership records under the final rule. Like private companies and other governmental organizations, the FDIC has established protocols for the efficient and effective generation and maintenance of files, records, and non-record documentary materials. These protocols reflect the importance of these materials and their relevance to the work of the FDIC.

Paragraph (d)(1) of the final rule sets forth the retention requirements for the receivership records described in paragraph (b)(3). The final rule clarifies that receivership records are likely to be valuable and consequential, given the significance of an orderly liquidation under Title II. Thus, the final rule emphasizes that receivership records, those records generated and maintained by the FDIC as it conducts a receivership, shall be retained indefinitely for as long as there is a present or reasonably foreseeable future evidentiary or historical need for them. In addition, the final rule sets a minimum retention standard during which, in effect, evidentiary need is conclusively presumed. That minimum period is a six-year minimum retention period for all receivership records measured from the termination of the receivership. In the case of a three-year receivership,[15] that would establish a minimum retention period of nine years.

Receivership records that are subject to a litigation hold by the FDIC or are subject to a Congressional subpoena or relate to an ongoing investigation by Congress, the United States Government Accountability Office or the FDIC's Office of Inspector General will be retained pursuant to the conditions of such subpoena, hold, or investigation under paragraph (d)(1) of the final rule.

Paragraph (d)(2) makes it clear that receivership records are those that are generated or maintained by the FDIC as receiver in connection with a Title II orderly liquidation and do not include the inherited records generated or maintained by the financial company which are addressed in paragraph (c) of the final rule.

Paragraph (d)(3) of the final rule sets forth a non-exclusive list of examples of receivership records in order to provide additional guidance and clarity with respect to the types of documentary material that are subject to the retention requirements of the final rule. Included examples are: Correspondence; tax forms; accounting forms and related work papers; inventories; contracts and other information relating to the management and disposition of the assets of the covered financial company; documentary material relating to the appointment of the FDIC as receiver; administrative records and other information relating to administrative proceedings; pleadings and similar documents in civil litigation, criminal restitution, forfeiture litigation, and all other litigation matters in which the FDIC as receiver is a party; the charter and formation documents of a bridge financial company; contracts, other documents and information relating to the role of the FDIC as receiver in overseeing the operations of the bridge financial company; reports or other records of the bridge financial company and its subsidiaries or affiliates that were provided to the FDIC as receiver; and documentary material relating to the administration, determination, and payment of claims by the FDIC as receiver.

5. Limits of Effect of Determinations With Respect to Records

Paragraph (e) of the final rule applies to any documentary material that falls within the scope of the retention requirements of the final rule as that scope is described in paragraphs (c) and (d). Paragraph (e)(1) of the final rule makes clear that the FDIC's designation of documentary material as inherited records or receivership records pursuant to paragraph (c) or (d) is solely for the purpose of identifying documentary material subject to the retention requirements of section 210(a)(16)(D) of the Act and the final rule has no effect on whether the documentary material is discoverable or admissible in any court, tribunal, or other adjudicative proceeding, nor on whether such material is subject to release under the Freedom of Information Act,[16] the Privacy Act of 1974,[17] or other law or court order. Thus, whether specific documentary material is an inherited record or a receivership record pursuant to the final rule does not alter its status under evidentiary rules such as the Federal Rules of Evidence ("FRE"). For example, FRE 803(1) provides that "records of regularly conducted activity" (business record) are not excluded from evidence by the rule against hearsay, regardless of whether the declarant is available as a witness. If certain documentary material meets the requirements of a business record pursuant to FRE 803(1), then whether or not the FDIC determines that specific documentary material constitutes an inherited record or a receivership record pursuant to the final rule will not affect the determination of whether the documentary material is a business record under FRE 803(1). In addition, whether specific material is or is not designated as an inherited record or a receivership record for purposes of section 210(a)(16)(D) of the Act and the final rule does not determine whether it is subject to a litigation hold or a request under the Freedom of Information Act, the Privacy Act, or any other law.

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[14] 12 U.S.C. 5382.

[15] See 12 U.S.C. 5382(d) (providing for a three-year initial time limit on receivership authority, subject to extensions as provided in that section).

[16] 5 U.S.C. 552.

[17] 5 U.S.C. 552a.

Paragraph (e)(1) also clarifies that any designation made by the FDIC under the final rule will not prevent full compliance with any applicable legal or regulatory requirement or court order that establishes particular requirements with respect to certain records, such as a requirement that specific records be preserved, maintained, destroyed, or kept under seal.

6. Duplicate and Transitory Materials

Paragraph (e)(2) of the final rule lists three categories of documentary material that are excluded from the definition of inherited records and receivership records and thus will not be subject to the retention requirements of section 210(a)(16)(D) of the Act and the final rule. The first category includes duplicate copies, as required by the mandate in section 210(a)(16)(D)(I) of the Act to accord due regard to the avoidance of duplicative record retention. Also in the first category is documentary material such as reference materials, drafts of documents that are superseded by later drafts or revisions, documentary material provided to the FDIC by other parties in concluded litigation for which all appeals have expired, transitory information including routine system messages or system-generated log files, notes and other material of a personal nature, or other documentary material not routinely maintained under the standard record retention policies and procedures of the FDIC. The term "transitory information" or "transitory record" is commonly used in record retention systems to describe records of temporary usefulness required only for a limited period of time for the completion of an action by an employee or official and that are not essential to the fulfillment of statutory obligations or the documentation of government or business functions.[18]

7. Records of Affiliate; Supervisory Materials

The second category of exclusions from the final rule encompasses documentary material generated or maintained by a bridge financial company[19] or by a subsidiary or affiliate of a covered financial company. The exclusion of this documentary material emphasizes the separate legal status of the covered financial company and its subsidiaries and of the FDIC as receiver and any bridge financial company the FDIC may organize for the purpose of resolving a covered financial company. The final rule addresses only inherited records and receivership records. Information provided to the FDIC in connection with the formation or oversight of the bridge financial company or by a covered financial company's subsidiaries or affiliates would be within the scope of the regulation; however, documentary material generated or maintained by a bridge financial company or a covered financial company's subsidiaries or affiliates in the ordinary course of business that is not provided to the FDIC would fall outside the scope of the retention requirements of this final rule.

The third category of exclusions from the scope of the final rule and section 210(a)(16)(D) of the Act is non-publicly available supervisory information and operating or condition reports that were prepared by, on behalf of, or at the requirement of any agency responsible for the supervision or regulation of the covered financial company or its subsidiaries. This is consistent with the federal common law bank examination privilege, many state statutes, and the FDIC's long-standing policy that reports of examination or other confidential supervisory correspondence or information prepared by FDIC examiners or for the use of the FDIC and other regulatory agencies with respect to a financial company or an insured depository institution or other regulated subsidiary of a financial company belong exclusively to such regulators and not to the institution, even though institutions may retain copies.

8. Policies and Procedures

Paragraph (f) of the final rule provides that the FDIC may establish policies and procedures with respect to the retention of inherited records and receivership records that are consistent with the final rule. It is expected that these policies and procedures will address specific matters related to the capture, processing, and storage of inherited records such as collecting computer hard drives, email databases, and backup and disaster recovery tapes, as well as establishing standard policies with respect to the retention of receivership records by the FDIC in its own files, information systems, and databases.

V. Expected Effects of the Final Rule

Immediately following the FDIC's appointment as receiver of a covered financial company pursuant to Title II of the Dodd-Frank Act, the FDIC's retention determinations and collections must begin with respect to both the records of the covered financial company and the FDIC's own records. The final rule will provide transparency and consistency with respect to these determinations and will ensure that records of a financial company that fails in a manner that would present systemic risk (absent the exercise of the Title II orderly liquidation authority), as well as the records generated in connection with the orderly liquidation of that financial company under Title II of the Dodd-Frank Act, will be available for as long as there is a reasonably foreseeable evidentiary need for such records. At the same time, the application of the factors described in the final rule will appropriately limit the costs of the maintenance of documentary material that is not covered by the statute.

VI. Alternatives Considered

The FDIC considered a range of alternatives from requiring permanent retention of all documentary material to providing for clear dates upon which records could be destroyed. The permanent retention of all documentary material is impractical, if not impossible. The FDIC deemed it important to include a broad definition of documentary material that could be considered inherited records or receivership record for the purpose of the final rule in light of the rapidly changing nature, forms, and format of data. At the same time, this explosion of data and changes in form and media make it important to differentiate between meaningful data and irrelevant information. In addition, as formats change the difficulty and expense of retrieving useful information becomes more complex. Accordingly, the FDIC identified factors that could be used to determine what documentary material comprised meaningful records that should be retained. At the same time, a hard-and-fast date for destruction is inappropriate where it is possible that some documentary material may have evidentiary significance longer than a specified time period. Accordingly, the final rule adopts a flexible determination that takes into account the nature of the records and their likely evidentiary value.

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[18] For example, the Texas Administrative Code, title 13, Chapter 6, Section 6.91 (2005) provides that transitory information are records of temporary usefulness that are not an integral part of a records series of an agency, that are not regularly filed within an agency's recordkeeping system, and that are required only for a limited period of time for the completion of an action by an official or employee of the agency or in the preparation of an on-going records series. According to the Texas Administrative Code, transitory records are not essential to the fulfillment of statutory obligations or to the documentation of agency functions. The National Archives and Records Administration (NARA) Bulletin 2013–02 (August 29, 2013), *Guidance on a New Approach to Managing Email Records* provides that agencies must determine whether end users may delete non-record, transitory, or personal email from their accounts. The Sedona Conference Commentary on Information Governance (December 2013) refers to the defensible deletion of transitory, non-substantive or non-record content. A World Health Organisation publication refers to the need to differentiate between records of substantive, fixed-term and transitory value. Deserno, Ineke and Kynaston, Donna, A Records Management Program that Works for Archives, The Information Management Journal, May/June 2005.

[19] This term is defined in 12 U.S.C. 5381(a)(3) and 12 CFR 380.1.

VII. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, requires that each Federal agency either certify that a rule will not have any significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. For purposes of the RFA analysis or certification, financial institutions with total assets of $550 million or less are considered to be "small entities." The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The final rule refines the definition of the term "records" under section 210(a)(16)(D) of the Dodd-Frank Act and establishes retention schedules that the FDIC must use in connection with its retention of inherited records and receivership. Accordingly, the final rule affects only the internal operations of the FDIC and there will be no significant economic impact on a substantial number of small entities as a result of this final rule.

B. Paperwork Reduction Act

No new collections of information within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, are contained in the final rule as it addresses only the FDIC's obligation to maintain certain records.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which provides for agencies to report rules to Congress and for Congress to review such rules.[20] As required by SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has presented the final rule in a simple and straightforward manner.

E. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999.[21]

List of Subjects in 12 CFR Part 380

Financial companies, Holding companies, Insurance companies, Records and records retention.

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR part 380 as follows:

PART 380—ORDERLY LIQUIDATION AUTHORITY

■ 1. The authority citation for part 380 is revised to read as follows:

Authority: 12 U.S.C. 5389; 12 U.S.C. 5390(s)(3); 12 U.S.C. 5390(b)(1)(C); 12 U.S.C. 5390(a)(7)(D); 12 U.S.C. 5381(b); 12 U.S.C. 5390(r); 12 U.S.C. 5390(a)(16)(D).

■ 2. Add § 380.14 to read as follows:

§ 380.14 Record retention requirements.

(a) *Scope.* 12 U.S.C. 5390(a)(16)(D) requires that the Corporation establish retention schedules for the maintenance of certain documents and records of a covered financial company for which the Corporation has been appointed receiver and certain documents and records generated by the Corporation as receiver for a covered financial company in connection with the exercise of its authorities under Title II of the Dodd-Frank Act, 12 U.S.C. 5381 through 5397. This section addresses retention of those two categories of documents and records.

(b) *Definitions.* For the purposes of this section, the following terms shall have the following meanings:

(1) *Documentary material.* The term *documentary material* means any reasonably accessible document, book, paper, map, photograph, microfiche, microfilm, or writing regardless of physical form or characteristics and includes any computer or electronically-created data or file.

(2) *Inherited record.* The term *inherited record* means documentary material of a covered financial company, provided that such documentary material existed on the date of the appointment of the Corporation as receiver for such covered financial company and was generated or maintained by the covered financial company in the course of, and necessary to, the transaction of its business. The determination of whether documentary material was generated or maintained by the covered financial company in the course of, and necessary to, the transaction of its business shall be based on an analysis of the following factors;

(i) Whether such documentary material was generated or maintained in accordance with the covered financial company's own practices and procedures (including the document retention policies of the covered financial company) or pursuant to standards established by the covered financial company's regulators;

(ii) Whether such documentary material is necessary for the Corporation to carry out its obligations as receiver for the covered financial company; and

(iii) Whether there is a present or reasonably foreseeable evidentiary need for such documentary material by the Corporation as receiver for the covered financial company or the public.

(3) *Receivership record.* The term *receivership record* means documentary material generated or maintained by the Corporation in accordance with the policies and procedures of the Corporation (including the document retention policies of the Corporation) that relates to the Corporation's appointment as receiver for a covered financial company or the exercise of its authorities as receiver for the covered financial company under 12 U.S.C. 5381 through 5397.

(c) *Inherited records.*—(1) *Retention schedule for inherited records.* The Corporation shall retain any inherited record of a covered financial company that was created fewer than ten years before the date of the appointment of the Corporation as receiver for the covered financial company for a period of no less than six years from the date of such appointment, provided however that an inherited record shall be retained indefinitely so long as it is:

(i) Subject to a litigation hold imposed by the Corporation;

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[20] Public Law 104–121, 110 Stat. 857.

[21] Public Law 105–277, 112 Stat. 2681.

(ii) Subject to a Congressional subpoena or relates to an ongoing investigation by Congress, the United States Government Accountability Office, or the Corporation's Inspector General; or

(iii) An inherited record that the Corporation has determined is necessary for a present or reasonably foreseeable future evidentiary need of the Corporation or the public.

(2) *Examples.* Examples of inherited records include, without limitation: Correspondence; tax forms, accounting forms, and related work papers; internal audits; inventories; board of directors or committee meeting minutes; personnel files and employee benefits information; general ledger and financial reports; financial data; litigation files; loan documents including records relating to intercompany debt; contracts and agreements to which the covered financial company was a party; customer accounts and transactions; qualified financial contracts and related information; and reports or other records of subsidiaries or affiliates of the covered financial company that were provided to the covered financial company.

(3) *Transfer of an inherited record to an acquirer of assets or liabilities of a covered financial company.* If the Corporation transfers an inherited record of a covered financial company to a third party (including a bridge financial company) in connection with the acquisition of assets or liabilities of the covered financial company by such third party, the record retention requirements of 12 U.S.C. 5390(a)(16)(D) and paragraph (c)(1) of this section shall be satisfied if the third party agrees, in writing, that:

(i) It will maintain the inherited record for at least six years from the date of the appointment of the Corporation as receiver for the covered financial company unless otherwise notified in writing by the Corporation; and

(ii) Prior to destruction of such inherited record it will provide the Corporation with notice and the opportunity to cause the inherited record to be returned to the Corporation.

(d) *Receivership records*—(1) *Retention schedule for receivership records.* (i) A receivership record shall be retained indefinitely to the extent that there is a present or reasonably foreseeable future evidentiary or historical need for such receivership record.

(ii) A receivership record that is subject to a litigation hold imposed by the Corporation, is subject to a Congressional subpoena, or relates to an ongoing investigation by Congress, the United States Government Accountability Office, or the Corporation's Office of Inspector General shall be retained pursuant to the conditions of such hold, subpoena, or investigation.

(iii) In no event shall a receivership record be retained by the Corporation for a period of less than six years following the termination of the receivership to which it relates.

(2) *Not included in receivership records.* Receivership records do not include inherited records.

(3) *Examples.* Examples of receivership records include, without limitation: Correspondence; tax forms, accounting forms and related work papers; inventories; contracts and other information relating to the management and disposition of the assets of the covered financial company; documentary material relating to the appointment of the Corporation as receiver; administrative records and other information relating to administrative proceedings; pleadings and similar documents in civil litigation, criminal restitution, forfeiture litigation, and all other litigation matters in which the Corporation as receiver is a party; the charter and formation documents of a bridge financial company; contracts, other documents, and information relating to the role of the Corporation as receiver in overseeing the operations of the bridge financial company; reports or other records of the bridge financial company and its subsidiaries or affiliates that were provided to the Corporation as receiver; and documentary material relating to the administration, determination, and payment of claims by the Corporation as receiver.

(e) *General provisions.* With respect to any documentary material described in paragraphs (c) and (d) of this section, the following applies:

(1) *Impact on discoverability, admissibility, or release; compliance with court orders.* The Corporation's determination that documentary material must be maintained pursuant to 12 U.S.C. 5390(a)(16)(D) and this section shall not bear on the discoverability or admissibility of such documentary material in any court, tribunal, or other adjudicative proceeding nor on whether such documentary material is subject to release under the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, or any other law. The Corporation shall comply with any applicable court order concerning mandatory retention or destruction of any documentary material subject to this section.

(2) *Exclusions.* Documentary material is not an inherited record nor a receivership record and is not subject to the record retention requirements of section 12 U.S.C. 5390(a)(16)(D) and this section if it is:

(i) A duplicate copy of retained documentary material, reference material, a draft of a document that is superseded by later drafts or revisions, documentary material provided to the Corporation by other parties in concluded litigation for which all appeals have expired, transitory information including routine system messages and system-generated log files, notes and other material of a personal nature, or other documentary material not routinely maintained under the standard record retention policies and procedures of the Corporation;

(ii) Documentary material generated or maintained by a bridge financial company, or by a subsidiary or affiliate of a covered financial company, that was not provided to the covered financial company or to the Corporation as receiver; or

(iii) Non-publicly available confidential supervisory information or operating or condition reports prepared by, on behalf of, or at the requirement of any agency responsible for the regulation or supervision of financial companies or their subsidiaries.

(f) *Policies and procedures.* The Corporation may establish policies and procedures with respect to the retention of inherited records and receivership records that are consistent with this section.

Dated at Washington, DC, this 21st day of June, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–15020 Filed 6–24–16; 8:45 am]

BILLING CODE 6714–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1026

Truth in Lending (Regulation Z) Annual Threshold Adjustments (CARD Act, HOEPA and ATR/QM)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule amending the regulatory text and official interpretations for

Regulation Z, which implements the Truth in Lending Act (TILA). The Bureau is required to calculate annually the dollar amounts for several provisions in Regulation Z; this final rule revises, as applicable, the dollar amounts for provisions implementing amendments to TILA under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), the Home Ownership and Equity Protection Act of 1994 (HOEPA), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In addition to adjusting these amounts, where appropriate, based on the annual percentage change reflected in the Consumer Price Index in effect on June 1, 2016, the Bureau is correcting a calculation error pertaining to the 2016 subsequent violation penalty safe harbor fee.

DATES: This final rule is effective January 1, 2017, except for the amendment to § 1026.52(b)(1)(ii)(B) which is effective on June 27, 2016.

FOR FURTHER INFORMATION CONTACT: Jaclyn Maier, Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552 at (202) 435–7700.

SUPPLEMENTARY INFORMATION: The Bureau is amending the regulatory text and official interpretations for Regulation Z, which implements TILA, to update the dollar amounts of various thresholds that are adjusted annually based on the annual percentage change in the Consumer Price Index. Specifically, for open-end consumer credit plans under the CARD Act, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged in 2017. The adjusted dollar amount for the safe harbor for a first violation penalty fee will remain unchanged at $27 in 2017; the adjusted dollar amount for the safe harbor for a subsequent violation penalty fee will remain unchanged in 2017 from the corrected amount of $38 applicable in 2016, as discussed in this notice. For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages in 2017 will be $20,579. The adjusted points and fees dollar trigger for high-cost mortgages will be $1,029. For the general rule to determine consumers' ability to repay mortgage loans, the maximum threshold for total points and fees for qualified mortgages in 2017 will be 3 percent of the total loan amount for a loan greater than or equal to $102,894; $3,087 for a loan amount greater than or equal to $61,737 but less than $102,894; 5 percent of the total loan amount for a loan greater than or equal to $20,579 but less than $61,737; $1,029 for a loan amount greater than or equal to $12,862 but less than $20,579; and 8 percent of the total loan amount for a loan amount less than $12,862.

I. Background

A. CARD Act Annual Adjustments

In 2010, the Board of Governors of the Federal Reserve System (Board) published amendments to Regulation Z implementing the CARD Act, which amended TILA. Public Law 111–24, 123 Stat. 1734 (2009). Pursuant to the CARD Act, the Board's Regulation Z amendments established new requirements with respect to open-end consumer credit plans, including requirements for the disclosure of minimum interest charge amounts and the establishment of a safe harbor provision allowing card issuers to impose penalty fees for violating account terms without violating the restrictions on penalty fees established by the CARD Act. *See* 75 FR 7658, 7799 (Feb. 22, 2010) and 75 FR 37526, 37527 (June 29, 2010). The final rule issued by the Board required that these thresholds be calculated annually using the Consumer Price Index as published by the Bureau of Labor Statistics (BLS).[1]

Minimum Interest Charge Disclosure Thresholds

Sections 1026.6(b)(2)(iii) and 1026.60(b)(3) of the Bureau's Regulation Z provide that the minimum interest charge thresholds will be re-calculated annually using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. When the cumulative change in the adjusted minimum value derived from applying the annual CPI–W level to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) has risen by a whole dollar, the minimum interest charge amounts set forth in the regulation will be increased by $1.00. The BLS publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of the month. This adjustment is based on the CPI–W index in effect on June 1, 2016, which was reported on May 17, 2016, and reflects the percentage change from April 2015 to April 2016. The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 28 percent of the U.S. population. The adjustment accounts for a 0.8 percent increase in the CPI–W from April 2015 to April 2016. This increase in the CPI–W when applied to the current amounts in §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) did not trigger an increase in the minimum interest charge threshold of at least $1.00, and therefore the Bureau is not amending §§ 1026.6(b)(2)(iii) and 1026.60(b)(3).

Penalty Fees Safe Harbor

The Bureau's Regulation Z provides that the safe harbor provision which establishes the permissible fee thresholds in § 1026.52(b)(1)(ii)(A) and (B) will be re-calculated annually using the CPI–W that was in effect on the preceding June 1. The BLS publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of the month. On September 21, 2015, the Bureau published an adjustment, effective January 1, 2016, based on the CPI–W index in effect on June 1, 2015, which was reported on May 22, 2015. The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 28 percent of the U.S. population. When the cumulative change in the adjusted value derived from applying the annual CPI–W level to the current amounts in § 1026.52(b)(1)(ii)(A) and (B) has risen by a whole dollar, those amounts will be increased by $1.00. Similarly, when the cumulative change in the adjusted value derived from applying the annual CPI–W level to the current amounts in § 1026.52(b)(1)(ii)(A) and (B) has decreased by a whole dollar, those amounts will be decreased by $1.00. See comment 52(b)(1)(ii)–2.

In the September 21, 2015, notice, 80 FR 56895, the subsequent violation penalty safe harbor fee amount in § 1026.52(b)(1)(ii)(B) was miscalculated, as it did not fully account for situations in which the CPI–W decreased, as occurred in 2015. The published subsequent violation penalty safe harbor fee amount was $37. Effective immediately, the Bureau is amending § 1026.52(b)(1)(ii)(B) to reflect the correct subsequent violation penalty safe harbor fee amount of $38.

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[1] The responsibility for promulgating rules under TILA was generally transferred from the Board to the Bureau effective July 21, 2011. The Bureau restated Regulation Z on December 22, 2011, and on April 28, 2016, adopted as final the December 22, 2011, notice as subsequently amended. *See* 76 FR 79768 (Dec. 22, 2011) and 81 FR 25323 (April 28, 2016), respectively. The Bureau's Regulation Z is located at 12 CFR part 1026. *See* sections 1061 and 1100A of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010). Section 1029 of the Dodd-Frank Act excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

The 2017 adjustment is based on the CPI–W index in effect on June 1, 2016, which was reported on May 17, 2016, and reflects the percentage change from April 2015 to April 2016. The 0.8 percent increase in the CPI–W from April 2015 to April 2016 did not trigger an increase in the first violation penalty safe harbor fee of $27 or the corrected subsequent violation penalty safe harbor fee of $38, and therefore, the Bureau is not further amending § 1026.52(b)(1)(ii)(A) and (B) for the 2017 calendar year.

B. HOEPA Annual Threshold Adjustments

On January 10, 2013, the Bureau issued a final rule pursuant to, *inter alia,* section 1431 of the Dodd-Frank Act, which revised the loan amount threshold for HOEPA loans. 78 FR 6856 (Jan. 31, 2013) (2013 HOEPA Final Rule). The 2013 HOEPA Final Rule adjusted the dollar amount threshold to $20,000. Under § 1026.32(a)(1)(ii)(A) and (B), when determining whether a transaction is a high-cost mortgage, the determination of the applicable points and fees coverage test is based upon whether the total loan amount is for $20,000 or more, or less than $20,000. The HOEPA 2013 Final Rule provides that this threshold amount be recalculated annually and the Bureau uses the Consumer Price Index for All Urban Consumers (CPI–U) index, as published by the BLS, as the index for adjusting the $20,000 figure. The CPI–U is based on all urban consumers and represents approximately 88 percent of the U.S. population. The BLS publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The adjustment to the CPI–U index reported by BLS on May 17, 2016, was the CPI–U index in effect on June 1, and reflects the percentage change from April 2015 to April 2016. The adjustment to the $20,000 figure being adopted here reflects a 1.1 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

Pursuant to section 1431 of the Dodd Frank Act and § 1026.32(a)(1)(ii)(B) as amended by the 2013 HOEPA Final Rule, implementation of the 2013 HOEPA Final Rule also changed the HOEPA points and fees dollar trigger to $1,000. The HOEPA 2013 Final Rule provides that this threshold amount will be recalculated annually and the Bureau uses the CPI–U index, as published by the BLS, as the index for adjusting the $1,000 figure. The adjustment to the CPI–U index reported by BLS on May 17, 2016, was the CPI–U index in effect on June 1, and reflects the percentage change from April 2015 to April 2016. The adjustment to the $1,000 figure being adopted here reflects a 1.1 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

C. Ability To Repay and Qualified Mortgages Annual Threshold Adjustments

On January 10, 2013, the Bureau issued a final rule pursuant to, *inter alia,* sections 1411 and 1412 of the Dodd-Frank Act, which implemented laws requiring mortgage lenders to determine consumers' ability to repay mortgage loans before extending them credit. 78 FR 6407 (Jan. 31, 2013) (2013 ATR/QM Final Rule). The 2013 ATR/QM Final Rule established the points and fees limits that a loan must not exceed in order to satisfy the requirements for a qualified mortgage. Specifically, a covered transaction is not a qualified mortgage if the transaction's points and fees exceed 3 percent of the total loan amount for a loan amount greater than or equal to $100,000; $3,000 for a loan amount greater than or equal to $60,000 but less than $100,000; 5 percent of the total loan amount for loans greater than or equal to $20,000 but less than $60,000; $1,000 for a loan amount greater than or equal to $12,500 but less than $20,000; and 8 percent of the total loan amount for loans less than $12,500. The 2013 ATR/QM Final Rule provides that the limits and loan amounts in § 1026.43(e)(3)(i) be recalculated annually for inflation and the Bureau uses the Consumer Price Index for All Urban Consumers (CPI–U) index, as published by the BLS, as the index for adjusting the figures. The CPI–U is based on all urban consumers and represents approximately 88 percent of the U.S. population. The BLS publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The adjustment to the CPI–U index reported by BLS on May 17, 2016, was the CPI–U index in effect on June 1, and reflects the percentage change from April 2015 to April 2016. The adjustment to the 2016 figures being adopted here reflects a 1.1 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

A. CARD Act Annual Adjustments

Minimum Interest Charge Disclosure Thresholds—§§ 1026.6(b)(2)(iii) and 1026.60(b)(3)

The minimum interest charge amounts for §§ 1026.6(b)(2)(iii) and 1026.60(b)(3) will remain unchanged for the year 2017. Accordingly, the Bureau is not amending these sections.

Penalty Fees Safe Harbor—§ 1026.52(b)(1)(ii)(A) and (B)

As discussed above, effective immediately, the permissible safe harbor fee amount in § 1026.52(b)(1)(ii)(B) is $38. Accordingly, the Bureau is revising § 1026.52(b)(1)(ii)(B) to reflect the corrected subsequent violation penalty safe harbor fee amount of $38.

Effective January 1, 2017, the permissible safe harbor fee amounts are $27 for § 1026.52(b)(1)(ii)(A) and $38 for § 1026.52(b)(1)(ii)(B). These amounts did not change based on the increase in CPI–W from April 2015 to April 2016. Thus, they remain the same as the 2016 amount for § 1026.52(b)(1)(ii)(A) and the 2016 amount corrected in this notice for § 1026.52(b)(1)(ii)(B). The Bureau is amending comment 52(b)(1)(ii)–2.i to preserve a list of the historical thresholds for this provision.

B. HOEPA Annual Threshold Adjustment—Comments 32(a)(1)(ii)–1 and –3

Effective January 1, 2017, for purposes of determining under § 1026.32(a)(1)(ii) the points and fees coverage test under HOEPA to which a transaction is subject, the total loan amount threshold is $20,579, and the adjusted points and fees dollar trigger under § 1026.32(a)(1)(ii)(B) is $1,029. When the total loan amount for a transaction is $20,579 or more, and the points and fees amount exceeds 5 percent of the total loan amount, the transaction is a high-cost mortgage. When the total loan amount for a transaction is less than $20,579, and the points and fees amount exceeds the lesser of the adjusted points and fees dollar trigger of $1,029 or 8 percent of the total loan amount, the transaction is a high-cost mortgage. Comments 32(a)(1)(ii)–1 and –3, which list the adjustments for each year, are amended to reflect for 2017 the new dollar threshold amount and the new points and fees dollar trigger, respectively.

C. Ability To Repay and Qualified Mortgages Annual Threshold Adjustments

Effective January 1, 2017, for purposes of determining whether a covered transaction is a qualified mortgage under § 1026.43(e), a covered transaction is not a qualified mortgage if, pursuant to § 1026.43(e)(3), the transaction's total points and fees exceed 3 percent of the total loan amount for a loan amount greater than or equal to $102,894; $3,087 for a loan amount greater than or equal to $61,737 but less than $102,894; 5 percent of the total loan amount for loans greater than or equal to $20,579 but less than $61,737; $1,029 for a loan amount greater than or equal to $12,862 but less than $20,579; and 8 percent of the total loan amount for loans less than $12,862. Comment 43(e)(3)(ii)–1, which lists the adjustments for each year, is amended to reflect the new dollar threshold amounts for 2017.

III. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, in Regulation Z, § 1026.52(b)(1)(ii)(B) in subpart E is amended and comments 32(a)(1)(ii)–1.iii and –3.iii, 43(e)(3)(ii)–1.iii, and 52(b)(1)(ii)–2.i.D in supplement I are added to update the exemption thresholds. Comments 32(a)(1)(ii)–1.iii and –3.iii, 43(e)(3)(ii)–1.iii, and 52(b)(1)(ii)–2.1.D added by this final rule are technical and non-discretionary, and they merely apply the method previously established in Regulation Z for determining adjustments to the thresholds. The amendment to § 1026.52(b)(1)(ii)(B) merely applies a necessary correction to address an inadvertent calculation error for the 2016 safe harbor fee. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form. The Bureau also finds that there is good cause for making the technical calculation correction to the safe harbor fee amount in § 1026.52(b)(1)(ii)(B) in this final rule effective immediately upon publication in the **Federal Register**. 5 U.S.C. 553(d). This portion of the final rule does not establish any new requirements; instead, it corrects an inadvertent error in the September 21, 2015, notice, 80 FR 56895, regarding the subsequent violation penalty safe harbor fee. Making the rule effective immediately will allow the correct amount to be used upon publication.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the Bureau reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart G—Special Rules Applicable to Credit Card Accounts and Open End Credit Offered to College Students

■ 2. Effective on June 27, 2016, § 1026.52(b)(1)(ii)(B) is revised to read as follows:

§ 1026.52 Limitation on fees.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) $38 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or

* * * * *

■ 3. Effective on January 1, 2017, in Supplement I to Part 1026—Official Interpretations:

■ a. Under *Section 1026.32—Requirements for High-Cost Mortgages,* under *32(a)—Coverage,* under *Paragraph 32(a)(1)(ii),* paragraphs 1.iii and 3.iii are added.

■ b. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling,* under *43(e)—Qualified mortgages,* under *Paragraph 43(e)(3)(ii),* paragraph 1.iii is added.

■ c. Under *Section 1026.52—Limitations on Fees,* under *52(b)—Limitations on penalty fees,* under *52(b)(1)(ii)—Safe harbors,* paragraph 2.i.D is added.

The additions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

Paragraph (a)(1).

* * * * *

Paragraph 32(a)(1)(ii).

1. * * *

iii\. For 2017, $1,029, reflecting a 1.1 percent increase in the CPI–U from June 2015 to June 2016, rounded to the nearest whole dollar.

* * * * *

3. * * *

iii\. For 2017, $20,579, reflecting a 1.1 percent increase in the CPI–U from June 2015 to June 2016, rounded to the nearest whole dollar.

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

43(e) Qualified mortgages.

* * * * *

43(e)(3) Limits on points and fees for qualified mortgages.

* * * * *

Paragraph 43(e)(3)(ii).

1. * * *

iii\. For 2017, reflecting a 1.1 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed:

A. For a loan amount greater than or equal to $102,894: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $61,737 but less than $102,894: $3,087;

C. For a loan amount greater than or equal to $20,579 but less than $61,737: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $12,862 but less than $20,579: $1,029;

E. For a loan amount less than $12,862: 8 percent of the total loan amount.

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

Section 1026.52—Limitations on Fees

* * * * *

52(b) Limitations on penalty fees.

* * * * *

52(b)(1) General rule.

* * * * *

52(b)(1)(ii) Safe harbors.

* * * * *

2. * * *

i. * * *

D. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $27 under § 1026.52(b)(1)(ii)(A), through December 31, 2016. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $37 under § 1026.52(b)(1)(ii)(B), through June 26, 2016, and $38 under § 1026.52(b)(1)(ii)(B) from June 27, 2016 through December 31, 2016.

* * * * *

Dated: June 14, 2016.

Richard Cordray

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–14782 Filed 6–24–16; 8:45 am]

BILLING CODE 4810–AM–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AE38

Treatment of Financial Assets Transferred In Connection With a Securitization or Participation

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is revising a provision of its Securitization Safe Harbor Rule, which relates to the treatment of financial assets transferred in connection with a securitization or participation, in order to clarify a requirement as to loss mitigation by servicers of residential mortgage loans.

DATES: Effective July 27, 2016.

FOR FURTHER INFORMATION CONTACT: George H. Williamson, Manager, Division of Resolutions and Receiverships, (571) 858–8199. Phillip E. Sloan, Counsel, Legal Division, (703) 562–6137.

SUPPLEMENTARY INFORMATION

I. Background

The FDIC, in its regulation codified at 12 CFR 360.6 (the "Securitization Safe Harbor Rule"), set forth criteria under which, in its capacity as receiver or conservator of an insured depository institution, it will not, in the exercise of its authority to repudiate contracts, recover or reclaim financial assets transferred in connection with securitization transactions. Asset transfers that, under the Securitization Safe Harbor Rule, are not subject to recovery or reclamation through the exercise of the FDIC's repudiation authority include those that pertain to certain grandfathered transactions, such as, for example, asset transfers made prior to December 31, 2010 that satisfied the conditions (except for the legal isolation condition addressed by the Securitization Safe Harbor Rule) for sale accounting treatment under generally accepted accounting principles ("GAAP") in effect for reporting periods prior to November 15, 2009 and that pertain to a securitization transaction that satisfied certain other requirements. In addition, the Securitization Safe Harbor Rule provides that asset transfers that are not grandfathered, but that satisfy the conditions (except for the legal isolation condition addressed by the Securitization Safe Harbor Rule) for sale accounting treatment under GAAP in effect for reporting periods after November 15, 2009 and that pertain to a securitization transaction that satisfies all other conditions of the Securitization Safe Harbor Rule (such asset transfers, together with grandfathered asset transfers, are referred to collectively as Safe Harbor Transfers) will not be subject to FDIC recovery or reclamation actions through the exercise of the FDIC's repudiation authority. For any securitization transaction in respect of which transfers of financial assets do not qualify as Safe Harbor Transfers but which transaction satisfies all of its other requirements, the Securitization Safe Harbor Rule provides that, in the event the FDIC as receiver or conservator remains in monetary default for a specified period under a securitization due to its failure to pay or apply collections or repudiates the securitization asset transfer agreement and does not pay damages within a specified period, certain remedies can be exercised on an expedited basis.

Paragraph (b)(3)(ii) of the Securitization Safe Harbor Rule sets forth conditions relating to the servicing of residential mortgage loans. This paragraph includes a condition that the securitization documents must require that the servicer commence action to mitigate losses no later than ninety days after an asset first becomes delinquent unless all delinquencies on such asset have been cured.

In January, 2013, the Consumer Financial Protection Bureau ("CFPB") adopted mortgage loan servicing requirements that became effective on January 10, 2014. One of the requirements, set forth in Subpart C to Regulation X, at 12 CFR 1024.41, in general prohibits a servicer from commencing a foreclosure unless the borrower's mortgage loan obligation is more than 120 days delinquent. This section of Regulation X also provides additional rules that, among other things, require a lender to further delay foreclosure if the borrower submits a loss mitigation application before the lender has commenced the foreclosure process and requires a lender to delay a foreclosure for which it has commenced the foreclosure process if a borrower has submitted a complete loss mitigation application more than 37 days before a foreclosure sale.[1]

II. The Proposed Rule

While the Securitization Safe Harbor Rule does not define what constitutes action to mitigate losses, the preamble to the notice of proposed rulemaking that accompanied an earlier amendment to the Securitization Safe Harbor Rule stated, "action to mitigate losses may include contact with the borrower or other steps designed to return the asset to regular payments, but does not require initiation of foreclosure or other formal enforcement proceedings."[2] Accordingly, it should be unlikely that the 90-day loss mitigation requirement of the Securitization Safe Harbor Rule would conflict with the foreclosure commencement delays mandated by the CFPB under Regulation X. However, as there may be circumstances where commencement of foreclosure is the only available and reasonable loss mitigation action, the FDIC recently issued a notice of proposed rulemaking (the "NPR") to amend the Securitization Safe Harbor Rule to clarify that the documents governing a securitization transaction need not require an action prohibited by Regulation X in order to satisfy the loss mitigation conditions for safe harbor. The NPR was published in the **Federal Register** on November 25, 2015 with a 60-day comment period.[3]

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[1] *See* 12 CFR 1024.41(f) and (g).

[2] 75 FR 27471, 27479 (May 17, 2010).

[3] 80 FR 73680 (November 25, 2015).

No comments were received by the FDIC in response to the NPR.

III. The Final Rule

Having received no comments on the NPR, the FDIC is adopting the amendment set forth in the NPR as a final rule (the "Final Rule"). Specifically, § 360.6(b)(3)(ii)(A) is being revised to include language stating that the loss mitigation action requirement thereunder "shall not be deemed to require that the documents include any provision concerning loss mitigation that requires any action that may conflict with the requirements of Regulation X . . ."

IV. Policy Objective

One of the FDIC's general policy objectives is to facilitate regulatory compliance and ease regulatory burden by ensuring that regulations are clear and consistent with other regulatory initiatives. In particular, the objective of this rulemaking is to harmonize the residential loan servicing condition of the Securitization Safe Harbor Rule with the CFPB's loan servicing requirements. Adopting the Final Rule accomplishes that objective.

V. Administrative Law Matters

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) ("PRA"), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget ("OMB") control number. The amendment set forth in the Final Rule would not revise the Securitization Safe Harbor Rule information collection (OMB No. 3064–0177) or create any new information collection pursuant to the PRA. Consequently, no submission will be made to the Office of Management and Budget with respect to the PRA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) ("RFA") requires each federal agency to prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[4] Pursuant to section 605(b) of the RFA, the FDIC certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

C. Small Business Regulatory Enforcement Act

The Office of Management and Budget has determined that this final rule is not a "major rule" within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*) ("SBREFA"). As required by the SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the Final Rule may be reviewed.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Final Rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and recordkeeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(1),1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

■ 2. Revise § 360.6(b)(3)(ii)(A) to read as follows:

§ 360.6 Treatment of financial assets transferred in connection with a securitization or participation.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(A) Servicing and other agreements must provide servicers with authority, subject to contractual oversight by any master servicer or oversight advisor, if any, to mitigate losses on financial assets consistent with maximizing the net present value of the financial asset. Servicers shall have the authority to modify assets to address reasonably foreseeable default, and to take other action to maximize the value and minimize losses on the securitized financial assets. The documents shall require that the servicers apply industry best practices for asset management and servicing. The documents shall require the servicer to act for the benefit of all investors, and not for the benefit of any particular class of investors, that the servicer maintain records of its actions to permit full review by the trustee or other representative of the investors and that the servicer must commence action to mitigate losses no later than ninety (90) days after an asset first becomes delinquent unless all delinquencies have been cured, *provided* that this requirement shall not be deemed to require that the documents include any provision concerning loss mitigation that requires any action that may conflict with the requirements of Regulation X (12 CFR part 1024), as Regulation X may be amended or modified from time to time.

* * * * *

Dated at Washington, DC, this 21st day of June, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–15019 Filed 6–24–16; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 109, 115, 120, and 121

RIN 3245–AG73

Affiliation for Business Loan Programs and Surety Bond Guarantee Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to the determination of size eligibility based on affiliation by creating distinctive requirements for small business applicants for assistance from the Business Loan, Disaster Loan and Surety Bond Guarantee Program ("SBG"). For purposes of this rule, the Business Loan Programs consist of the 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program ("ILP"), and the Development Company Loan Program ("504 Loan Program"). Note: the Intermediary Lending Pilot Program was inadvertently left out of the proposed rule. There are currently intermediaries with revolving funds for eligible small businesses, so the program has been included in this final rule. The Disaster Loan Programs consist of Physical Disaster Business Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury

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[4] *See* 5 U.S.C. 603, 604 and 605.

Disaster Loans, and Immediate Disaster Assistance Program loans. This rule redefines and establishes separate affiliation guidance applicable only to small business applicants in these Programs.

DATES: This rule is effective July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Dianna Seaborn, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW., Washington, DC 20416; telephone 202–205–3645.

SUPPLEMENTARY INFORMATION:

I. Background

SBA is revising its regulations on affiliation for the Business Loan, Disaster Loan, and SBG Programs by separating and distinguishing the rules from the Agency's government contracting, business development and other programs. This change streamlines the rules to comply with Executive Order 13563. This Executive Order "Improving Regulation and Regulatory Review," provides that agencies "*must* identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends." (Emphasis added). Executive Order 13563 further provides that "[t]o facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote *retrospective analysis* of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to *modify, streamline,* expand, or repeal them in accordance with what has been learned." (Emphasis added).

The loan programs authorized by the Small Business Act (Act), 15 U.S.C. 631 *et seq.*, that are affected by this final rule are: (1) The 7(a) Loan Program authorized by Section 7(a) of the Act; (2) the Business Disaster Loan ("BDL") Program authorized by Sections 7(b) and 42 of the Act; (3) the Microloan Program authorized by Section 7(m) of the Act; and (4) the ILP Program authorized by Section 7(l) of the Act. The 504 Loan Program, which is authorized by Title V of the Small Business Investment Act of 1958 (the "SBIA"), as amended, 15 U.S.C. 695 *et seq.*, is also affected. Finally, this rule affects the Surety Bond Guarantee ("SBG") Program, authorized by section 411 of the SBIA. A detailed description of each program was included in the proposed rule.

On October 2, 2015, SBA published a proposed rule with request for comments in the **Federal Register** to identify changes to the rules on to simplify and streamline the application review process for the Business Loan, Disaster Loan, and SBG Programs. (80 FR 59667, October 2, 2015). These proposed affiliation changes apply only to applicants and not to SBA participants or CDCs in the programs. The comment period ended December 1, 2015.

II. Summary of Comments

The Agency received and reviewed the public comments on its affiliation rules for 13 CFR parts 115, 120 and 121 in a proposed rule (80 FR 59667, October 2, 2015). The following narrative summarizes the comments reviewed and specifies the final rule changes regarding size standards based on principles of affiliation involving applicants to the Business Loan, Disaster Loan, and SBG Programs.

Size based on affiliation for applicants to the Business Loan, Disaster Loan, and SBG Programs will be addressed separately in a new § 121.301(f) to distinguish them from affiliation requirements for government contracting, business development, and SBA's other programs. These changes impact only the small business applicants and not lenders, CDCs, and surety bond companies.

SBA received 160 comments related to the proposed affiliation standards for the Business Loan, Disaster Loan, and SBG Programs. Of the comments received, 128 comments were from financial institutions (lenders and Certified Development Companies), 15 comments were from lender service providers, 4 comments were from businesses (accounting and consulting firms), 7 comments were from trade associations, 3 comments were from law firms, 2 comments were from franchises, and 1 comment was from an individual that did not disclose an organizational type. All but 5 commenters indicated support for the majority of the proposed affiliation rule. There were 4 opposing comments related only to proposed changes to 121.301(f)(5), affiliation based on franchise and license agreements, and a 5th comment expressing concern about compliance regarding the affiliation rules for Surety Bonds in conjunction with federal contracts.

Thirty-four commenters requested modification of the defined management officials in § 121.301(f)(1) and (f)(3).

Ninety-six commenters requested additional clarification in the language proposed defining who SBA includes for the identity of interest test in § 121.301(f)(4), while 36 requested that it be eliminated in its entirety.

One hundred thirty-eight commenters supported changes to 121.301(f)(5), "Affiliation based on franchise and license agreements," specifically requesting further modifications and clarity as to how SBA aggregates franchisees/licensees with franchisors/licensors as affiliates to determine whether the small business applicant (franchisee/licensee) is a small, independent business. The comments opposing franchise affiliation changes were received from a consulting group, an individual, a law firm, and one lender. These comments revolved around franchise disclosures and relationship issues under the jurisdiction of the FTC, and the lack of clarity

Thirty-seven commenters requested removal of the "totality of circumstances" analysis in § 121.301(f)(6), while 92 commenters recommended examples and/or greater clarity for when and how SBA will apply this analysis. SBA's responses to these comments are detailed in the following sections.

III. Section-by-Section Analysis of Comments and Changes

Section 109.20. In § 109.20 *Definitions,* SBA proposes to include an amendment for the definition of Affiliate for the ILP Program from 13 CFR 121.103 to § 121.301. SBA did not receive comments regarding this program as it is not currently funded.

Section 115.10. In § 115.10 *Definitions,* SBA proposed to amend the definition of Affiliate for the SBG Program from the general 13 CFR 121 to the more specific § 121.301. One comment expressed concern about the potential necessity for small business contractors to comply with the affiliation rules for contracting, as well as the separate rules for Surety Bond Guarantees.

SBA data indicates that the significant majority of surety bond guarantees are for non-federal contracts which will benefit from this simplified rule. For the federal contract recipients, the existing contract rules will still apply, and if eligible thereunder, would also be eligible under this rule for the Surety Bond Guarantee. The provision is adopted as proposed.

Section 120.1700. Definitions used in subpart J. SBA proposed to amend the definition of Affiliate in § 121.1700 for purposes of the First Lien Position 504 Loan Pooling Program. However, after further review, SBA determined that this affiliation rule for the Business Loan, Disaster Loan and Surety Bond Programs does not apply to 13 CFR 120.1700. SBA is not adopting the proposed change.

Section 121.103(a)(8). SBA proposed establishing the new § 121.103(a)(8) to advise the public that the principles of affiliation for applicants in the Business Loan, Disaster Loan and SBG Programs will be moved to a new § 121.301(f). The final rule clarifies that § 121.301(f) applies only to applicants for these specific programs. Affiliation for SBA's other programs remains unchanged.

Section 121.301(f). SBA proposed establishing the new § 121.301(f) where the principles for determining affiliation to qualify applicant business concerns as small, and therefore eligible to apply for the Business Loan, Disaster Loan, and SBG Programs would be located. The SBA has established this separate subsection because the analysis of affiliation under the Business Loan, Disaster Loan and Surety Bond Programs is different from the analysis for contracting programs. The affiliation guidance for all other SBA programs, including the government contracting and business development programs, remains unchanged.

Section 121.301(f)(1). SBA proposed establishing the new § 121.301(f)(1) *Affiliation Based on Ownership,* where SBA would determine that control exists based on ownership when: (1) A person owns or has the power to control more than 50% of the voting equity of a concern; or (2) if no one person owns or has the power to control more than 50% of the voting equity of the concern, SBA would deem the small business to be controlled by either the President, Chairman of the Board, Chief Executive Officer (CEO) of the concern, or other officers, managing members, partners, or directors who control the management of the concern. A total of 155 commenters supported a change in the rule, with 34 of the commenters proposing further modification to limit the scope to only the President, CEO, Managing Partner, or Principal Manager. The comments for limiting scope were not adopted as it would not include all potential management and ownership organizational structures. Based on the elimination of the totality of circumstances, more fully discussed in § 121.301(f)(6), SBA proposes to include in this section that SBA finds control when a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders. SBA is adopting the regulation with the inclusion of the Board and other shareholders.

Section 121.301(f)(2). SBA is establishing the new § 121.301(f)(2) *Affiliation arising under stock options, convertible securities, and agreements to merge,* where SBA would duplicate language from § 121.103(d). Other than duplicating the language in a different section of the regulation, SBA did not change the existing principles regarding affiliation arising under stock options, convertible securities, and agreements to merge currently found in § 121.103(d). A total of 155 commenters supported keeping this the same, and repeating the language in § 121.301(f)(2) for the Business Loan, Disaster Loan, and SBG Programs. There were no opposing comments. SBA is adopting the rule as proposed.

Section 121.301(f)(3). SBA proposed establishing the new § 121.301(f)(3) *Affiliation based on management,* where SBA will utilize the same principles of affiliation for common management set forth in § 121.103. Thirty-four commenters proposed limiting the scope of common management consideration to only the President, CEO, Managing Partner, or Principal Manager. Commenters did not include reasons for the requested elimination of Board members. SBA does not adopt the request for limiting scope, as they do not include consideration of all potential management organizational structures. In addition, SBA has modified the language to clarify that management agreements are included in the types of managers and management subject to consideration under this regulation. Details on the types of management agreements that result in determinations of affiliation will be provided in SBA Loan Program Requirements. SBA is adopting the rule with refinements that include management by agreement.

Section 121.301(f)(4). SBA proposed establishing the new § 121.301(f)(4) *Affiliation based on identity of interest,* where SBA would re-define the presumptions underlying the principles of establishing an identity of interest. The proposed rule provided that SBA would presume affiliation between two or more persons with an identity of interest, and the presumption could be rebutted with evidence showing that the interests are separate. The proposed rule provided further that SBA would presume an identity of interest between close relatives, as defined in 13 CFR 120.10. The proposed rule deviated from the existing rule in 13 CFR 121.103(f) by not specifically citing common investments and economic dependence as bases for finding an identity of interest. There were 155 commenters supporting a separate affiliation rule for identity of interest for the Business Loan and SBG Programs. Ninety-six commenters recommended additional clarity from SBA on the definition on "identity of interest," as to the aggregation of unrelated parties and former employers. Thirty-six commenters requested elimination of the "identity of interest" regulation. SBA reviewed the language and disagrees with the request to eliminate the language related to identity of interest between close relatives, but otherwise agrees with the commenters' suggestion to remove other bases for affiliation through identity of interest. SBA has revised the proposed rule by retaining identity of interest between close relatives but otherwise eliminating discussion of identity of interest for other reasons.

Section 121.301(f)(5). SBA proposed establishing the new § 121.301(f)(5) *Affiliation based on franchise and license agreements,* where SBA proposed language that would limit franchise or license agreement reviews to the applicant franchisee or licensee and the franchisor, and not consider any franchise or license relationship of an affiliate of the applicant. A total of 138 commenters supported this change to SBA's treatment of franchisee affiliation with franchisors. The majority of commenters, however, expressed concern that the proposed rule was confusing, and others commented that the proposed rule did not go far enough to resolve the challenges and costs involved in the review of franchise relationships. Some commenters stated the proposed rule would not eliminate inconsistent determinations of franchise affiliation by SBA. Partnering with internal and external stakeholders, SBA made an extensive effort to better understand the burden imposed by existing processes, to identify relevant risks and to develop meaningful improvements. Along with public comments, SBA received specific comment from the office of Steve Chabot, Chairman of the House Small Business Committee, encouraging SBA to streamline and improve how best to address franchised business size relative to affiliation.

The current regulatory language in § 121.103(f) recognizes that "the restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format, and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership." The current regulation continues, stating that "affiliation may arise, however, through other means, such as common ownership, common management, or excessive restrictions upon the sale of the franchise interest." Commenters indicated that SBA's determination of the types of controls that do or do not constitute affiliation is not clear and is inconsistent with the overarching concept that many restraints are generally not considered when determining affiliation. Some commenters recommended that the regulation be amended to delete the provision that affiliation would be found based on restrictions in the agreement so long as the franchisee continues to have the right to profit from its efforts and bears the risk of loss commensurate with ownership. Additionally, many commenters recommended language be included in the regulatory text to clarify SBA's intent to only review agreements of the "applicant" and not review any agreements of affiliated entities. These commenters recommended adding language to the regulatory text similar to what was included in the Supplementary Information in the proposed rule.

Based on the volume of comments received in the current and previous rulemaking requests, and to provide consistency in its application of the principles of affiliation involving franchise or license agreements, SBA is removing regulatory text that only addressed certain types of restraint. The regulatory changes clarify that SBA does not consider that franchise or license relationships create affiliation, provided the franchisee/licensee has the right to profit from its efforts, and bears the risk of loss commensurate with ownership. SBA will provide guidance on the franchisee/licensee's right to profit from its efforts and bear the risk of loss commensurate with ownership in its Standard Operating Procedure (SOP) 50 10.

SBA also is adding a sentence to the end of the regulatory text to clarify its intent that only franchise or license relationships of the applicant will be considered, not those of any of the applicant's affiliates.

Section 121.301(f)(6). SBA proposed establishing the new § 121.301(f)(6) *Affiliation based on SBA's determination of the totality of circumstances,* where SBA proposed to retain finding of affiliation based on the totality of circumstances similar to the regulations currently found in § 121.103(a)(5). There were 97 commenters requesting elimination of this rule, and 37 commenters indicated that including this requirement as a factor for determining affiliation would contravene SBA's stated intent of providing a bright line test of affiliation. Commenters requested examples of when SBA would apply the test so that participants could better understand how this factor would impact eligibility decisions. SBA reviewed and considered the concerns identified regarding the potential overarching but undefined aggregation of circumstances. SBA agrees that the prior rules in proposed § 121.301(f)(1)–(5) and (7)–(8) provide specificity. Generally examples reviewed are negative control, and control through management agreement. Rather than include examples here, SBA is removing the totality of the circumstances criterion, but provides specific guidance in § 121.301(f)(1) and (f)(3) to address negative control, and control through management agreements that would have been included in this section. SBA agrees with the commenters' suggestions and will remove this paragraph from the final rule. Therefore proposed § 121.301(f)(7) and (f)(8) are renumbered § 121.301(f)(6) and (f)(7).

Section 121.301(f)(7). SBA proposed establishing the new § 121.301(f)(7) *Determining the concern's size,* where SBA states that SBA counts receipts, employees, or alternate size standards of a concern and its affiliates. There were no specific objections regarding this provision. SBA is adopting the rule as proposed, and renumbered as § 121.301(f)(6).

Section 121.301(f)(8). SBA proposed establishing the new § 121.301(f)(8) *Exceptions to affiliation,* where SBA would incorporate the exceptions to affiliation set forth in 13 CFR 121.103(b). There were no specific objections regarding this provision. The proposed rule is adopted as written, and renumbered as § 121.301(f)(7).

Finally, SBA proposed not to apply several current principles of affiliation that apply in the federal contracting and business development programs to the Business Loan, Disaster Loan, and SBG Programs. Specifically, SBA proposed to eliminate applying affiliation based on a newly organized concern (*see* § 121.103(g)) and joint ventures (*see* § 121.103(h)). One purpose of the newly organized concern rule is to prevent former small businesses from creating spin-off companies in order to continue to perform on small business contracts or receive other contracting benefits. While this affiliation principle is appropriate for federal contracting, it is generally not applicable to the Business Loan, Disaster Loan, or SBG Programs. The only responsible party or parties for an SBA loan are the owners or guarantors executing debt instruments on behalf of the applicant business. Generally, former employers of small business applicants are not obligors nor are they guarantors on extensions of credit to SBA applicants. There were no specific objections to the elimination of newly organized concerns or joint ventures as affiliates for purposes of these programs. SBA adopts the proposed exclusion from the rule on affiliation for the Business Loan, Disaster Loan, and SBA Programs.

With respect to joint ventures, these partnerships form when two or more businesses combine their efforts in order to perform on a federal contract or receive other contract assistance. SBA does not consider affiliation based on the joint venture to be of significant concern to the Business Loan or Disaster Loan Programs because a loan to any joint venture will require all members of the joint venture to accept full responsibility for loan guarantee liability. Also, agency records indicate that applicants for assistance under SBA Business Loan and Disaster Loan Programs are rarely, if ever, joint ventures, and, therefore, this provision is unnecessary. For the Surety Bond Guarantee Program, the guarantee is on the bond, not a contract. In any joint venture where the surety company requests a bond guarantee, each member of the joint venture is required to accept full responsibility for the bond guarantee liability.

SBA also proposed to omit "negative control" as a stand-alone factor in determining affiliation for the purpose of loan eligibility. Pursuant to 13 CFR 121.103(a)(3), negative control may exist where a minority shareholder can block certain actions by the board of directors. SBA received many comments requesting clarity or removal of § 121.301(f)(6) Affiliation based on SBA's determination of the totality of circumstances. SBA agreed to the removal of § 121.301(f)(6), and included additional specific guidance as to negative control through minority ownership and by management agreement in § 121.301(f)(1) and (f)(3) respectively.

IV. Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a "significant" regulatory action for the purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The Agency believes it needs to reduce regulatory burdens and expand its Business Loan, Disaster Loan, and SBG Programs by streamlining delivery, lowering costs, and facilitating job creation. As noted above, responses received from the **Federal Register** proposed rule notice regarding SBA rules on affiliation were in favor of simplified rules that enhance understanding and align with normal commercial industry practices. Specifically of the 160 commenters for the proposed rule on affiliation, 4 comments were from businesses (accounting and consulting firms), 3 comments were from law firms, and 1 comment was from an individual that did not disclose their organizational type. All of the small business comments showed support for the affiliation rule. Small business applicants will be assisted by this streamlining of requirements because it will be easier and more cost effective for a lender to research whether the applicant small business controls or is controlled by large companies which would jeopardize their eligibility. Higher lender costs potentially result in greater costs to the applicant small business. No comments were received from small businesses on the regulatory impact analysis during the proposed rule comment period.

2. What are the potential benefits and costs of this regulatory action?

This rule will eliminate unnecessary cost burdens on loan applicants' and lenders' participation in SBA-guaranteed loans. This final rule exempts the Business Loan, Disaster Loan, and SBG Programs from certain government contracting rules that determine whether an entity is deemed affiliated with an applicant. These general affiliation rules apply to federal contracting to ensure that small businesses (and not another entity) receive and perform a federal contract when a preference for small businesses is provided. Many of these general principles of affiliation (*e.g.,* newly organized concern) are not applicable to the Business Loan, Disaster Loan, or SBG Programs. SBA reviewed five years of data from the SBA Loan Guaranty Processing Center. The data specifically tracked reasons each loan would have been screened out. During the five-year period, based on the screen out reasons specific to affiliation, 1,379 small businesses failed to submit affiliate financials, and 1,363 needed clarifications or additional information to complete processing. SBA has determined that the proposed simplification of size based on affiliation will eliminate confusion, and save time and costs for the small business applicants and the lenders. Additionally this regulatory action will improve SBA processing efficiency and turnaround times.

3. What alternatives have been considered?

As indicated above, on October 2, 2015, the Agency issued a proposed rule for comment in the **Federal Register** to identify several changes intended to reinvigorate the Business Loan, Disaster Loan, and SBG Programs by eliminating unnecessary compliance burdens and loan eligibility restrictions. The Agency previously published in the **Federal Register** on February 25, 2013, a prior proposed rule for comment on 7(a) and 504 loan program requirements which had also included proposed changes to the affiliation rules for loan programs. *See* Proposed Rule: 504 and 7(a) Loan Programs Updates, 78 FR 12633 (February 25, 2013). Included in these proposals was an alternate affiliation definition. After a full comment period ending April 26, 2013, and careful consideration of all comments, SBA decided to further deliberate and consider issues of redefining affiliation for the Business Loan Programs and SBG Program. As a result, no changes were adopted regarding affiliation in the 7(a) and 504 loan program final rule. *See* Final Rule: 504 and 7(a) Loan Programs Updates, 78 FR 15641 (March 21, 2014).

This final rule presents a set of requirements to determine affiliation based on the precedent separating the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs from the government contracting standards. SBA has reviewed extensive public comments and suggestions in developing this final rule and considered changes needed to mitigate identified economic risk to the taxpayers and reduce waste, fraud, and abuse.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

The Business Loan Programs operate through the Agency's lending partners, which are 7(a) Lenders for the 7(a) Loan Program, Intermediaries for the Microloan Program and ILP Program, and CDCs for the 504 Loan Program. The Agency participated in public forums and meetings with NAGGL board members and program participants at industry conferences from the Fall of 2014 through Spring of 2015 which allowed it to reach trade associations and hundreds of its lending partners from which it gained valuable insight, guidance, and suggestions. The Agency's outreach efforts to engage stakeholders before proposing this rule was extensive, and concluded with the comment period.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

The SBA has determined that this final rule would not impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act (PRA). In fact, those individuals and entities that SBA considers potential affiliates has been refined and reduced for the Business Loan, Disaster Loan, and the SBG Programs, which could result in reduced reporting and recordkeeping. Participants in SBA's 7(a) Loan Program will continue to report any affiliates of their business on SBA Form 1919 (OMB Control No. 3245–0348), and participants in SBA's 504 Loan Program will continue to report affiliates on SBA Form 1244 (OMB Control No. 3245–0071). EIDL Program participants will continue to report affiliates on SBA Form 5 (OMB Control No. 3245–0017), and SBG Program participants will continue to report affiliates on SBA

Form 994 (OMB Control No. 3245–0007).

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rulemaking, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to "prepare and make available for public comment a final regulatory analysis" which will "describe the impact of the final rule on small entities." Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The rulemaking will positively impact all of the approximately 4,000 7(a) Lenders (some of which are small), 35 Intermediary Lending Pilot lenders, approximately 260 CDCs (all of which are small), 145 Microloan Intermediaries, and 23 Sureties in the SBG Program. The final rule will reduce the burden on program participants. SBA has determined that the streamlining of certain program process requirements through this modification of eligibility based on affiliation will present no adverse or significant impact, including costs for the small business borrower, lender, or CDC. This proposal presents a best practice rule that removes unnecessary regulatory burdens, increases access to capital for small businesses and facilitates American job preservation and creation. SBA has determined that there is no significant impact on a substantial number of small entities.

Small business applicants will be assisted by this streamlining of requirements because it will be easier and more cost effective for lenders to identify whether applicant small businesses control or are controlled by other companies that would jeopardize eligibility. SBA reviewed five years of data from the SBA Loan Guaranty Processing Center. The data specifically tracked reasons for loan screen outs that delayed processing. During the five-year period based on the screen out reasons specific to affiliation, the processing was delayed for over 2,600 loan applicants. SBA believes that the proposed simplified rules on affiliation provide participants with needed clarity that results in reduction of the paperwork and review time required to make accurate determinations. The time/cost benefit for business applicants and participants is substantial. Additionally this regulatory action will improve SBA processing efficiency and turnaround times.

The SBA Administrator certified to the Chief Counsel for Advocacy of the SBA that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As such, the Chief Counsel certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects

13 CFR Part 109

Community development, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

13 CFR Part 120

Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR parts 109, 115, 120, and 121 as follows:

PART 109—INTERMEDIARY LENDING PILOT PROGRAM

■ 1. The authority citation for 13 CFR part 109 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), and 636(1).

■ 2. Amend § 109.20 to revise the definition of "Affiliate" to read as follows:

§ 109.20 Definitions.

Affiliate is defined in § 121.301(f) of this chapter.

* * * * *

PART 115—SURETY BOND GUARANTEE

■ 3. The authority citation for 13 CFR part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110–246, Sec. 12079, 122 Stat. 1651.

■ 4. Amend § 115.10 to revise the definition of "Affiliate" to read as follows:

§ 115.10 Definitions.

Affiliate is defined in § 121.301(f) of this chapter.

* * * * *

PART 120—BUSINESS LOANS

■ 5. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h), and (m), 650, 687(f), 696(3), and 697(a) and (e); Pub. L. 111–5, 123 Stat. 115, Pub. L. 111–240, 124 Stat. 2504.

■ 6. Revise the first sentence of § 120.151 to read as follows:

§ 120.151 What is the statutory limit for total loans to a Borrower?

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in § 121.301(f) of this chapter, must not exceed a guaranty amount of $3,750,000, except as otherwise authorized by statute for a specific program. * * *

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 7. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 8. Amend § 121.103 to add paragraph (a)(8) to read as follows:

§ 121.103 How does SBA determine affiliation?

(a) * * *

(8) For applicants in SBA's Business Loan, Disaster Loan, and Surety Bond Guarantee Programs, the size standards and bases for affiliation are set forth in § 121.301.

* * * * *

■ 9. Amend § 121.301 to revise the section heading and to add paragraph (f) to read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

* * * * *

(f) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. Affiliation under any of the circumstances described below is sufficient to establish affiliation for applicants for SBA's Business Loan, Disaster Loan, and Surety Bond Programs. For this rule, the Business Loan Programs consist of the 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program ("504 Loan Program"). The Disaster Loan Programs consist of Physical Disaster Business

Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans. The following principles apply for the Business Loan, Disaster Loan, and Surety Bond Guarantee Programs:

(1) *Affiliation based on ownership.* For determining affiliation based on equity ownership, a concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50 percent of the concern's voting equity. If no individual, concern, or entity is found to control, SBA will deem the Board of Directors or President or Chief Executive Officer (CEO) (or other officers, managing members, or partners who control the management of the concern) to be in control of the concern. SBA will deem a minority shareholder to be in control, if that individual or entity has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

(2) *Affiliation arising under stock options, convertible securities, and agreements to merge.* (i) In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(ii) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered "agreements in principle" and are thus not given present effect.

(iii) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(iv) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals', concerns', or other entities' ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

(3) *Affiliation based on management.* Affiliation arises where the CEO or President of the applicant concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single individual, concern, or entity that controls the Board of Directors or management of one concern also controls the Board of Directors or management of one of more other concerns. Affiliation also arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.

(4) *Affiliation based on identity of interest.* Affiliation arises when there is an identity of interest between close relatives, as defined in 13 CFR 120.10, with identical or substantially, identical business or economic interests (such as where the close relatives operate concerns in the same or similar industry in the same geographic area). Where SBA determines that interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(5) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement generally will not be considered in determining whether the franchisor or licensor is affiliated with an applicant franchisee or licensee provided the applicant franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. SBA will only consider the franchise or license agreements of the applicant concern.

(6) *Determining the concern's size.* In determining the concern's size, SBA counts the receipts, employees (§ 121.201), or the alternate size standard (if applicable) of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

(7) *Exceptions to affiliation.* For exceptions to affiliation, see 13 CFR 121.103(b).

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–14984 Filed 6–24–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4210; Directorate Identifier 2015–NM–067–AD; Amendment 39–18567; AD 2016–13–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 767 airplanes. This AD was prompted by a determination that certain splice plate locations of the aft pressure bulkhead web are hidden and cannot be inspected using existing manufacturer service information. This AD requires repetitive open-hole high frequency eddy current (HFEC) inspections for cracking of the aft pressure bulkhead web. We are issuing this AD to detect and correct cracking in the aft pressure bulkhead web, which could result in rapid airplane decompression and loss of structural integrity.

DATES: This AD is effective August 1, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 1, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4210.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4210, or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 767 airplanes. The NPRM published in the **Federal Register** on October 30, 2015 (80 FR 66841) ("the NPRM"). The NPRM was prompted by a determination that certain splice plate locations of the aft pressure bulkhead web are hidden and cannot be inspected using existing manufacturer service information. The NPRM proposed to require repetitive open-hole HFEC inspections for cracking of the aft pressure bulkhead web. We are issuing this AD to detect and correct cracking in the aft pressure bulkhead web, which could result in rapid airplane decompression and loss of structural integrity.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support of the AD

FedEx, United Airlines, and United Parcel Service comments supported the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the supplemental type certificate (STC) ST01920SE does not affect the actions specified in the NPRM.

We concur with the commenter. We have redesignated paragraph (c) of the proposed AD as (c)(1) and added a new paragraph (c)(2) to this AD to state that installation of STC ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027f43b9a7486e86257b1d006591ee/$FILE/ST01920SE.pdf*) does not affect the ability to accomplish the actions required by this final rule. Therefore, for airplanes on which STC ST01920SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request for Clarification of Applicability in the Service Information

Vision Airlines requested clarification on the effectivity in the service information. Vision Airlines stated that the airplane group numbers, line numbers, and configurations do not cover all airplanes that are identified in Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015. More specifically, Vision Airlines stated that there is no mention in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, of airplane line numbers 1–175 that have not had the aft pressure bulkhead replaced. Vision Airlines did receive guidance from Boeing stating that line numbers 1–175 without the replaced aft pressure bulkhead should use Boeing Alert Service Bulletin 767–53A0026, Revision 5, dated January 29, 2004, which is mandated by AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005); corrected March 11, 2005 (70 FR 12119).

We partially agree. We agree that the table on page 7 of Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, may be confusing. However, page 7 is part of the Summary section of Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, and is not mandated by this AD. This AD requires using the effectivity information specified in paragraph 1.E.,"Compliance" of Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, which is correct in the identification of the Group 1 airplanes. The Group 1 airplanes are all line number 1–175 airplanes on which the aft pressure bulkhead was replaced in accordance with Boeing Alert Service Bulletin 767–53A0139, November 12, 2009. If any of these airplanes have not yet had the aft pressure bulkhead replaced as required by AD 2012–09–08, Amendment 39–17043, (77 FR 28240, May 14 2012) ("AD 2012–09–08"), then they are not yet a Group 1 airplane and are not subject to the requirements this of this AD until the aft pressure bulkhead is replaced. We have not changed this AD in this regard.

Request To Add ADs to Paragraph (b) of the Proposed AD

Boeing requested that we add AD 2004–05–16, Amendment 39–13511, (69 FR 10917, March 9, 2004) ("AD 2004–05–16"), AD 2012–09–08, and AD 2014–14–04, Amendment 39–17899 (79 FR 44673, August 1, 2014) ("AD 2014–14–04") to paragraph (b) of the proposed AD. Boeing stated that these ADs do not specifically address the splice plate locations, but the inspection areas defined in these ADs can be interpreted to cover these locations. Boeing noted that Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, provides information on FAA-approved AMOCs for ADs 2004–05–16, 2012–09–08, and 2014–14–04.

We partially agree. We agree that ADs 2004–05–16, 2012–09–08, and 2014–14–04 are "related" to this AD because Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, provides information on FAA-approved AMOCs that could be used for compliance with ADs 2004–05–16, 2012–09–08, and 2014–14–04. However, we do not agree to revise paragraph (b) of this AD because it identifies "affected" ADs, and ADs 2004–05–16, 2012–09–08, and 2014–14–04 are not affected by the requirements of this AD. For example, the requirements of ADs 2004–05–16, 2012–09–08, and 2014–14–04 are not terminated by any requirements of this AD. We have not changed this AD in this regard.

Request for Clarification of the Terminating Actions in Paragraph (h) of the Proposed AD

Boeing requested that we clarify the terminating actions in paragraph (h) of the proposed AD. Boeing stated that the existing AD language is vague, and suggested changing the last sentence of paragraph (h) to specify the type of repair as a "reinforcing repair." Boeing pointed out that Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, provides information on specific AMOCs for existing repairs with damage tolerance evaluation and approval from Boeing. Boeing asserted that under the existing language non-reinforcing repairs such as hole enlargements and blending would terminate any inspections in the area and might not be correctly evaluated per 14 CFR 26.43.

We agree that non-reinforcing repairs are not an acceptable method to terminate the repetitive inspections. We have revised paragraph (h) of this AD accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015. The service information describes procedures for removing the aft row of fasteners from each of the splice plates and doing an open-hole HFEC inspection for cracking in the aft pressure bulkhead at station 1582. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 430 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive inspections	Up to 46 work-hours × $85 per hour = $3,910 per inspection cycle.	$0	Up to $3,910 per inspection cycle.	Up to $1,681,300 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–13–03 The Boeing Company: Amendment 39–18567; Docket No. FAA–2015–4210; Directorate Identifier 2015–NM–067–AD.

(a) Effective Date

This AD is effective August 1, 2016.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) [STC ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027f43b9a7486e86257b1d006591ee/$FILE/ST01920SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a determination that certain splice plate locations of the aft pressure bulkhead web are hidden and cannot be inspected using existing manufacturer service information. We are issuing this AD to detect and correct cracking in the aft pressure bulkhead web, which could result in rapid airplane decompression and loss of structural integrity.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspections of Station (STA) 1582 Aft Pressure Bulkhead Web Under the Pressure Slice Plates

At the applicable times specified in Table 1 and Table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, except as required by paragraph (i) of this AD: Do an open-hole high frequency eddy current (HFEC) inspection for cracking in the aft pressure bulkhead web at STA 1582, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, except as required by paragraph (h) of this AD. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at intervals not to exceed 12,000 flight cycles.

(h) Repair

If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, specifies to contact Boeing for repair instructions: Before further flight, repair the crack in accordance with the procedures specified in paragraph (j) of this AD. Accomplishing a reinforcing repair terminates the inspections required by paragraph (g) of this AD in the area under the repair only.

(i) Exceptions to the Service Information

Where Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified time after the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov*.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 767–53A0266, dated April 20, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on June 14, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14752 Filed 6–24–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8432; Directorate Identifier 2015–NM–100–AD; Amendment 39–18570; AD 2016–13–06]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aeronautics (Type Certificate Previously Held by Saab AB, Saab Aerosystems) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) and SAAB 340B airplanes. This AD was prompted by reports of ruptured horizontal stabilizer de-icing boots. This AD requires a revision of the applicable airplane flight manual (AFM), repetitive inspections of the horizontal stabilizer de-icing boots, and applicable corrective actions. We are issuing this AD to detect and correct damage of the de-icing boot; such damage could lead to a ruptured boot, severe vibrations, and possible reduced control of the airplane.

DATES: This AD is effective August 1, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 1, 2016.

ADDRESSES: For service information identified in this final rule, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab340techsupport@saabgroup.com;* Internet *http://www.saabgroup.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8432.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8432; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) and SAAB 340B airplanes. The

NPRM published in the **Federal Register** on January 13, 2016 (81 FR 1588) ("the NPRM"). The NPRM was prompted by reports of ruptured horizontal stabilizer de-icing boots. The NPRM proposed to require a revision of the applicable AFM, repetitive inspections of the horizontal stabilizer de-icing boots, and applicable corrective actions. We are issuing this AD to detect and correct damage of the de-icing boot; such damage could lead to a ruptured boot, severe vibrations, and possible reduced control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for Member States of the European Union, has issued EASA Airworthiness Directive 2015–0129, dated July 6, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) and SAAB 340B airplanes. The MCAI states:

> There have been some reported events of ruptured horizontal stabilizer de-icing boots. In-flight rupture of a de-icing boot will result in complete loss of the de-icing function within its associated zone. In addition, in some of these events, the de-icing boot had formed a large open scoop.
>
> This condition, if not detected and corrected, could lead to severe vibrations, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, SAAB issued Alert Operations Bulletin (AOB) No. 12 and AOB No. 23 as a temporary measure, recommending performing a flap 0 landing in the event of a suspected rupture of the de-icing boot on the horizontal stabilizer.
>
> In addition, SAAB issued SB 340–30–094 to provide instructions to inspect the affected de-icing boots.
>
> For the reasons described above, this [EASA] AD requires an amendment of the applicable Airplane Flight Manual (AFM) and, pending the development of a modification by SAAB, repetitive inspections of the horizontal stabilizer de-icing boots and, depending on findings, accomplishment of applicable corrective action(s).
>
> This [EASA] AD is considered to be an interim action and further AD action may follow.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8432.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise Paragraph (g) To Allow Later Approved Revisions of AFMs

Saab AB, Saab Aeronautics requested that we revise paragraph (g) of the proposed AD to state that the use of later-approved revisions of the applicable AFMs is also acceptable for compliance with the proposed AD.

We do not agree. When referring to specific service information in an AD, using the phrase, "or later FAA-approved revisions," violates Office of the Federal Register regulations for approving materials that are incorporated by reference. However, affected operators may request approval to use a later revision of the referenced service information as an alternative method of compliance, under the provisions of paragraph (i)(1) of this AD. We have not changed this AD in this regard.

Request To Expand Description of Inspection

Saab AB, Saab Aeronautics also requested that we revise paragraph (h) of the proposed AD to explain that the inspection is not only for damage, but also for existing repairs. The commenter stated that the inspection of existing repairs is described in Saab Service Bulletin 340–30–094, dated March 27, 2015, but missing from paragraph (h) of the proposed AD.

We agree with the request. The referenced service information specifies inspecting for damage of the de-icing boots, and a sub-step specifies to "make sure that already made repairs are within specified limits." That action was not specifically stated in the proposed AD. We have clarified the requirement by changing paragraph (h) of this AD to ensure that de-icing boots as well as existing repairs are within specified limits.

Request To Change the Repetitive Inspection Interval to 600 Flight Hours

PenAir requested a change to the repetitive inspection interval. The commenter requested that the repetitive inspection interval be increased from the proposed 400-flight-hour interval to a 600-flight-hour interval. The commenter also stated that in the event that a 600-flight-hour interval is determined to be unsuitable, then a 450-flight-hour interval should be used. The commenter stated that this change would align with scheduled E-check inspections, alleviate the undue burden of creating maintenance outside of scheduled computerized aircraft maintenance program inspections, and maintain safe operation of the airplane.

We do not agree with the commenter's request to extend the compliance time. We have determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate safely before the next inspection is required. In addition, since maintenance schedules vary among operators, there would be no assurance that a different interval would satisfy all operators' schedules. However, under the provisions of paragraph (i)(1) of this AD, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Saab Service Bulletin 340–30–094, dated March 27, 2015. The service information describes procedures for repetitive detailed inspections of the de-icing boots installed on the horizontal stabilizers, and repair and replacement of damaged de-icing boots.

We also reviewed the following AFMs, which describe performance limitations and general data:

- Saab AFM 340A 001, Revision 57, dated March 27, 2015.
- Saab AFM 340B 001, Revision 35, dated March 27, 2015.
- Saab AFM 340B 010, Revision 28, dated March 27, 2015.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 92 airplanes of U.S. registry.

We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $46,920, or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $9,500, for a cost of $10,010 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–13–06 Saab AB, Saab Aeronautics (Type Certificate Previously Held by Saab AB, Saab Aerosystems): Amendment 39–18570. Docket No. FAA–2015–8432; Directorate Identifier 2015–NM–100–AD.

(a) Effective Date

This AD is effective August 1, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Saab Aeronautics (Type Certificate Previously Held by Saab AB, Saab Aerosystems) airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) airplanes, serial numbers (S/Ns) 004 through 138 inclusive, on which Saab Modification 1462 has been embodied in production, or Saab Service Bulletin 340–55–008 has been embodied in service, except those on which Saab Modification 1793 has also been embodied in production, or Saab Service Bulletin 340–55–010 has been embodied in service; and Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) airplanes, S/Ns 139 through 159 inclusive. Applicable Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) airplanes S/N 004–138, Post Modification No. 1462 but Pre Modification No. 1793, have a maximum flap setting of 35 degrees instead of 20 degrees, and horizontal stabilizer boots with spanwise tubes instead of chordwise tubes.

(2) Saab AB, Saab Aeronautics Model SAAB 340B airplanes, S/Ns 160 through 459 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Reason

This AD was prompted by reports of ruptured horizontal stabilizer de-icing boots. We are issuing this AD to detect and correct damage of the de-icing boot; such damage could lead to a ruptured boot, severe vibrations, and possible reduced control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD, revise the "Abnormal Procedures" section of the applicable Saab 340 AFM to incorporate the revision specified in paragraphs (g)(1) through (g)(3) of this AD.

(1) For Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) airplanes, revise AFM 340A 001 by incorporating Revision 57, dated March 27, 2015.

(2) For Saab AB, Saab Aeronautics Model SAAB 340B airplanes, revise AFM 340B 001 by incorporating Revision 35, dated March 27, 2015.

(3) For Saab AB, Saab Aeronautics Model SAAB 340B airplanes with extended wing tips, revise AFM 340B 010 by incorporating Revision 28, dated March 27, 2015.

(h) Inspection/Replacement

Within 400 flight hours or 6 months, whichever occurs first after the effective date of this AD, do a detailed inspection for damage of the horizontal stabilizer de-icing boots, and existing repairs of horizontal stabilizer de-icing boots, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–30–094, dated March 27, 2015. Repeat the inspection thereafter at intervals not to exceed 400 flight hours. If, during any inspection required by this paragraph, any damage or existing repair outside the limits specified in Saab Service Bulletin 340–30–094, dated March 27, 2015, is found, before further flight, repair or replace the horizontal stabilizer de-icing boots, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–30–094, dated March 27, 2015. Repair or replacement on an airplane of the horizontal stabilizer de-icing boots, as required by this paragraph, does not constitute terminating action for the repetitive inspections required by this paragraph for that airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using

any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0129, dated July 6, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8432.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Saab Service Bulletin 340–30–094, dated March 27, 2015.

(ii) Saab AFM 340A 001, Revision 57, dated March 27, 2015.

(iii) Saab AFM 340B 001, Revision 35, dated March 27, 2015.

(iv) Saab AFM 340B 010, Revision 28, dated March 27, 2015.

(3) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab340techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 13, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14871 Filed 6–24–16; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

RIN 3038–AE45

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its rule that governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the Commodity Exchange Act (CEA) and Commission rules, regulations and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

DATES: *Effective Date:* This interim final rule is effective August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Edward J. Riccobene, Associate Chief Counsel, Division of Enforcement, at (202) 418–5327 or *ericcobene@cftc.gov,* Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA)[1] requires the head of each Federal agency to periodically adjust for inflation the minimum and maximum amount of CMPs provided by law within the jurisdiction of that agency.[2] On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act),[3] which further amended the FCPIAA to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires agencies to: (1) Adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation.[4] Agencies are required to publish interim final rules with the initial penalty adjustment amounts by July 1, 2016, and the new penalty levels must take effect no later than August 1, 2016.[5]

II. Commodity Exchange Act Civil Monetary Penalties

The inflation adjustment requirement applies to any penalty, fine or other sanction that (A) is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. 28 U.S.C. 2461 note. The CEA provides for CMPs that meet the above definition and are, therefore, subject to the inflation adjustment in the following instances: Sections 6(c), 6(d), 6b, and 6c of the CEA.[6]

Section 6(c) of the CEA,[7] as adjusted by the FCPIAA,[8] currently sets the maximum CMP that may be imposed by the Commission in an administrative proceeding on "any person (other than a registered entity)" for: (1) Each violation of Section 6(c) of the CEA or any other provisions of the Act or of the rules, regulations, or orders of the Commission thereunder to the greater of $140,000 or triple the monetary gain to the violator; and (2) any manipulation or attempted manipulation in violation of Section 6(c) or 9(a)(2) of the CEA to the greater of $1,000,000 or triple the monetary gain to the violator.

Section 6(d) of the CEA,[9] as adjusted by the FCPIAA,[10] currently sets the maximum CMP that may be imposed by the Commission in an administrative proceeding on "any person (other than a registered entity)"[11] for violations of

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[1] The FCPIAA, Public Law 101–410 (1990), as amended, is codified at 28 U.S.C. 2461 note. The FCPIAA states that the purpose of the act is to establish a mechanism that (1) allows for regular adjustment for inflation of civil monetary penalties; (2) maintains the deterrent effect of civil monetary penalties and promote compliance with the law; and (3) improves the collection by the Federal Government of civil monetary penalties.

[2] For the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules, regulations and orders promulgated thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

[3] *See* 2015 Act, Public Law 114–74, 129 Stat. 584 (2015), title VII, Section 701.

[4] *Id.*, Section 701(b). Rule 143.8(b) is amended to reflect the change to annual adjustments from "once every four years."

[5] 2015 Act, Section 701(b).

[6] 7 U.S.C. 9, 13a, 13a–1, 13b.

[7] 7 U.S.C. 9.

[8] *See* 17 CFR 143.8(a)(1).

[9] 7 U.S.C. 13b.

[10] *See* 17 CFR 143.8(a)(2).

[11] The term "registered entity" is a defined term under the CEA. Section 1a(40) provides that the term "registered entity" means (A) a board of trade designated as a contract market under section 7 of

Continued

the CEA or any other provisions of the CEA or of the rules, regulations, or orders of the Commission thereunder to the greater of $140,000 or triple the monetary gain to the violator.

Section 6b of the CEA[12] provides that the Commission in an administrative proceeding may impose a CMP on: (1) Any registered entity for not enforcing or has not enforced its rules of government made a condition of its designation or registration as set forth in the CEA, or (2) any registered entity, or any director, officer, agent, or employee of any registered entity, for violations of the CEA or any rules, regulations, or orders of the Commission thereunder. For each violation for which a CMP is assessed pursuant to Section 6b, the current, FCPIAA-adjusted maximum penalty is set at: The greater of $1,025,000 or triple the monetary gain to such person for manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the CEA; and the greater of $700,000 or triple the monetary gain to such person for all other violations.[13]

Section 6c of the CEA[14] provides that Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States and the court may impose on a CMP on "any registered entity or other person" found by the court to have committed any violation of any provision of the CEA or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery or any swap. For each violation for which a CMP is assessed pursuant to Section 6c(d), the current, FCPIAA-adjusted maximum penalty is set at: The greater of $1,000,000 or triple the monetary gain to such person for manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the CEA; and the greater of $140,000 or triple the monetary gain to such person for all other violations.[15]

III. Inflation Adjustment for Commodity Exchange Act Civil Monetary Penalties

A. Methodology

The inflation adjustment under the FCPIAA, in the context of the CFTC's CMPs, is determined by increasing the maximum penalty by a "cost-of-living adjustment," rounded to the nearest multiple of $1.[16] For purposes of this initial, catch-up adjustment, the cost-of-living adjustment means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of October, 2015 exceeds the Consumer Price Index for all Urban Consumers (CPI–U)[17] for the month of October of the calendar year during which the amount of such civil monetary penalty was established or adjusted under a provision of law other than the FCPIAA.[18] The amount of the CMP increase is capped at 150 percent of the amount of that civil monetary penalty on the date of enactment of the 2015 Act.[19]

B. Civil Monetary Penalty Adjustments

Applying the FCPIAA catch-up adjustment methodology results in the following amended CMPs:

Citation	Description	Year CMP last set by law other than under the FCPIAA[1]	CMP amount last set by law other than under the FCPIAA	Current CMP amount (including prior FCPIAA adjustments)	Inflation adjusted CMP amount[2]
Section 6(c) of the CEA, 7 U.S.C. 9.	Prohibition Regarding Manipulation and False Information [Other Violation (Non-Manipulation)].	2010	$140,000	$140,000	$152,243
Section 6(c) of the CEA, 7 U.S.C. 9.	Prohibition Regarding Manipulation and False Information [Manipulation or Attempted Manipulation].	2008	1,000,000	1,000,000	1,098,190
Section 6(d) of the CEA, 7 U.S.C. 13b.	Manipulations or Other Violations; Cease and Desist Orders Against Persons Other Than Registered Entities; Punishment; Misdemeanor or Felony; Separate Offenses.	2010	140,000	140,000	152,243
Section 6b of the CEA, 7 U.S.C. 13a.	Nonenforcement of Rules of Government or Other Violations; Cease and Desist Orders; Fines and Penalties; Imprisonment; Misdemeanor; Separate Offenses [Other Violation (Non-Manipulation)].	1992	500,000	700,000	838,640
Section 6b of the CEA, 7 U.S.C. 13a.	Nonenforcement of Rules of Government or Other Violations; Cease and Desist Orders; Fines and Penalties; Imprisonment; Misdemeanor; Separate Offenses [Manipulation or Attempted Manipulation].	2008	1,000,000	1,025,000	1,098,190
Section 6c of the CEA, 7 U.S.C. 13a–1.	Enjoining or Restraining Violations [Other Violation (Non-Manipulation)].	1992	100,000	140,000	167,728

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the act; (B) a derivatives clearing organization registered under section 7a–1 of the act; (C) a board of trade designated as a contract market under section 7b–1 of the act; (D) a swap execution facility registered under section 7b–3 of the act; (E) a swap data repository registered under section 24a of the act; and (F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded. 7 U.S.C. 1a(40).

[12] 7 U.S.C. 13a.

[13] 17 CFR 143.8(a)(3).

[14] 7 U.S.C. 13a–1.

[15] 17 CFR 143.8(a)(2).

[16] FCPIAA Sections 4 and 5.

[17] The CPI–U is published by the Department of Labor. Interested parties may find the relevant Consumer Price Index on the Internet. To access this information, go to the Consumer Price Index Home Page at: *http://www.bls.gov/cpi/.* Under the "CPI Databases" heading, select "All Urban Consumers (Current Series)", "Top Picks." Then check the box for "U.S. All Items, 1967=100 - CUUR0000AA0", and click the "Retrieve data" button.

After this initial catch-up adjustment, subsequent annual inflation adjustments will be based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U. FCPIAA Section 4(b)(2).

[18] FCPIAA Section 5(b)(2).

[19] *Id.*

Citation	Description	Year CMP last set by law other than under the FCPIAA[1]	CMP amount last set by law other than under the FCPIAA	Current CMP amount (including prior FCPIAA adjustments)	Inflation adjusted CMP amount[2]
Section 6c of the CEA, 7 U.S.C. 13a–1.	Enjoining or Restraining Violations [Manipulation or Attempted Manipulation].	2008	1,000,000	1,025,000	1,098,190

[1] Sections 212 and 221 of the Futures Trading Practices Act of 1992, Public Law 102–546, 106 Stat. 3590 (1992), set maximum CMPs for Sections 6b and 6c of the CEA, 7 U.S.C. 13a, 13a–1, with respect to non-manipulation violations. Section 13103 of the CFTC Reauthorization Act of 2008, Title XIII of Public Law 110–234, 122 Stat. 923 (2008), set maximum CMPs for Sections 6(c), 6b and 6c of the CEA, 7 U.S.C. 9, 13a, 13a–1, with respect to manipulation violations. Section 753 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), set maximum CMPs for Sections 6(c) and 6(d) of the CEA, 7 U.S.C. 9, 13b, with respect to non-manipulation violations.

[2] The catch-up cost-of-living adjustment for CMPs last set by law 1992 is 67.728%. The cost-of-living adjustment for CMPs last set by law 2008 is 9.819%. The cost-of-living adjustment for CMPs last set by law 2010 is 8.745%.

The FCPIAA, as amended by the 2015 Act, provides that any increase under the FCPIAA in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.[20] Thus, the new CMP amounts may be applied only in Commission administrative or civil injunctive enforcement proceedings that are initiated on or after the effective date of this amendment, August 1, 2016.[21]

IV. Administrative Compliance

A. Notice Requirement

The notice and comment procedures of 5 U.S.C. 553 do not apply to this rulemaking because the Commission is acting herein pursuant to statutory language which mandates that the Commission act in a nondiscretionary matter. *Lake Carriers' Ass'n* v. *E.P.A.*, 652 F.3d 1, 10 (D.C. Cir. 2011).[22]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act[23] requires agencies with rulemaking authority to consider the impact of certain of their rules on small businesses. A regulatory flexibility analysis is only required for rule(s) for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) or any other law. Because the Commission is not obligated by section 553(b) or any other law to publish a general notice of proposed rulemaking with respect to the revisions being made to regulation 143.8, the Commission additionally is not obligated to conduct a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA),[24] which imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. This rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

D. Consideration of Costs and Benefits

Section 15(a) of the CEA[25] requires the Commission to consider the costs and benefits of its action before issuing a new regulation. Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission believes that benefits of this rulemaking greatly outweigh the costs, if any. As the Commission understands, the statutory provisions by which it is making cost-of-living adjustments to the CMPs in regulation 143.8 were enacted to ensure that CMPs do not lose their deterrence value because of inflation. An analysis of the costs and benefits of these adjustments were made before enactment of the statutory provisions under which the Commission is operating, and limit the discretion of the Commission to the extent that there are no regulatory choices the Commission could make that would supersede the pre-enactment analysis with respect to the five factors enumerated in section 15(a), or any other factors.

List of Subjects in 17 CFR Part 143

Civil monetary penalties, Claims.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 143 as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

■ 1. The authority citation for part 143 is revised to read as follows:

Authority: 7 U.S.C. 9, 15, 9a, 12a(5), 13a, 13a–1(d), 13(a), 13b; 31 U.S.C. 3701–3720E; 28 U.S.C. 2461 note.

■ 2. Amend § 143.8 as follows:

■ a. Revise paragraphs (a)(1) through (4) and (b); and

■ b. Remove paragraph (c).

The revisions read as follows:

§ 143.8 Inflation-adjusted civil monetary penalties.

(a) * * *

(1) For a civil penalty assessed pursuant to Section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9, against any person (other than a registered entity):

(i) In an administrative proceeding before the Commission or a civil action in Federal court initiated prior to August 1, 2016:

(A) For manipulation or attempted manipulation violations:

(*1*) Committed on or after May 22, 2008, not more than the greater of

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[20] FCPIAA Section 6.

[21] Prior to the 2015 Act, the date of the violation determined the inflation-adjusted penalty applicable to the violation. 28 U.S.C. 2461 note, Section 6 (2012) (inflation-adjusted penalty increases applied "only to violations which occur after the date the increase takes effect"). Consequently, rule 143.8 as revised will continue apply the prior violation date specific penalty amount with respect to CFTC enforcement proceedings initiated prior to August 1, 2016. Further, the Commission will strike rule 143.8(c), which memorialized the prior intent of Congress regarding the application of inflation-adjusted penalties, which was amended by the 2015 Act.

[22] The Commission has determined that the amendment to rule 143.8 is exempt from the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of proposed rulemaking and provide other opportunities for public participation, but excludes rules of agency practice, such as those found in part 143 of the Commission's regulations, and in particular rule 143.8 being revised herein.

[23] 5 U.S.C. 601–612.

[24] 44 U.S.C. 3507(d).

[25] 7 U.S.C. 19(a).

$1,000,000 or triple the monetary gain to such person for each such violation; and

(*2*) [Reserved]

(B) For all other violations:

(*1*) Committed between November 27, 1996 and October 22, 2000, not more than the greater of $110,000 or triple the monetary gain to such person for each such violation;

(*2*) Committed between October 23, 2000 and October 22, 2004, not more than the greater of $120,000 or triple the monetary gain to such person for each such violation;

(*3*) Committed between October 23, 2004 and October 22, 2008, not more than the greater of $130,000 or triple the monetary gain to such person for each such violation; and

(*4*) Committed on or after October 23, 2008, not more than the greater of $140,000 or triple the monetary gain to such person for each such violation;

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on or after August 1, 2016:

(A) For manipulation or attempted manipulation violations, not more than the greater of $1,098,190 or triple the monetary gain to such person for each such violation; and

(B) For all other violations:

(*1*) Not more than the greater of $152,243 or triple the monetary gain to such person for each such violation; and

(*2*) [Reserved]

(2) For a civil monetary penalty assessed pursuant to Section 6(d) of the Commodity Exchange Act, 7 U.S.C. 13b, against any person (other than a registered entity):

(i) In an administrative proceeding before the Commission or a civil action in Federal court initiated prior to August 1, 2016, for violations committed on or after August 15, 2011, not more than the greater of $140,000 or triple the monetary gain to such person for each such violation; and

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated prior or after August 1, 2016, not more than the greater of $152,243 or triple the monetary gain to such person for each such violation; and

(3) For a civil monetary penalty assessed pursuant to Section 6b of the Commodity Exchange Act, 7 U.S.C. 13a, against any registered entity or any director, officer, agent, or employee of any registered entity:

(i) In an administrative proceeding before the Commission or a civil action in Federal court initiated prior to August 1, 2016:

(A) For manipulation or attempted manipulation violations:

(*1*) Committed between May 22, 2008 and August 14, 2011, not more than the greater of $1,000,000 or triple the monetary gain to such person for each such violation;

(*2*) Committed on or after August 15, 2011, not more than the greater of $1,025,000 or triple the monetary gain to such person for each such violation; and

(B) For all other violations:

(*1*) Committed between November 27, 1996 and October 22, 2000, not more than $550,000 for each such violation;

(*2*) Committed between October 23, 2000 and October 22, 2004, not more than $575,000 for each such violation;

(*3*) Committed between October 23, 2004 and October 22, 2008, not more than $625,000 for each such violation;

(*4*) Committed between October 23, 2008 and October 22, 2012, not more than the greater of $675,000 or triple the monetary gain to such person for each such violation; and

(*5*) Committed on or after October 23, 2012, not more than the greater of $700,000 or triple the monetary gain to such person for each such violation; and

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on or after August 1, 2016:

(A) For manipulation or attempted manipulation violations, not more than the greater of $1,098,190 or triple the monetary gain to such person for each such violation; and

(B) For all other violations, not more than the greater of $838,640 or triple the monetary gain to such person for each such violation;

(4) For a civil monetary penalty assessed pursuant to Section 6c of the Commodity Exchange Act, 7 U.S.C. 13a–1, against any registered entity or other person:

(i) In an administrative proceeding before the Commission or a civil action in Federal court initiated prior to August 1, 2016:

(A) For manipulation or attempted manipulation violations:

(*1*) Committed between May 22, 2008 and August 14, 2011, not more than the greater of $1,000,000 or triple the monetary gain to such person for each such violation; and

(*2*) Committed on or after August 15, 2011, not more than the greater of $1,025,000 or triple the monetary gain to such person for each such violation; and

(B) For all other violations:

(*1*) Committed between November 27, 1996 and October 22, 2000, not more than the greater of $110,000 or triple the monetary gain to such person for each such violation;

(*2*) Committed between October 23, 2000 and October 22, 2004, not more than the greater of $120,000 or triple the monetary gain to such person for each such violation;

(*3*) Committed between October 23, 2004 and October 22, 2008, not more than the greater of $130,000 or triple the monetary gain to such person for each such violation; and

(*4*) Committed on or after October 23, 2008, not more than the greater of $140,000 or triple the monetary gain to such person for each such violation;

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on or after August 1, 2016:

(A) For manipulation or attempted manipulation violations, not more than the greater of $1,098,190 or triple the monetary gain to such person for each such violation; and

(B) For all other violations, not more than the greater of $167,728 or triple the monetary gain to such person for each such violation.

(b) The Commission will adjust for inflation the maximum penalties set forth in this section on a yearly basis.

Issued in Washington, DC, on June 21, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Adjustment of Civil Monetary Penalties for Inflation—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016–15078 Filed 6–24–16; 8:45 am]

BILLING CODE 6351–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 498

[Docket No. SSA–2016–0009]

RIN 0960–AH99

Penalty Inflation Adjustments for Civil Money Penalties

AGENCY: Social Security Administration.

ACTION: Interim Final Rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and further amended by the Bipartisan Budget Act of 2015, section 701: Federal Civil Penalties Inflation

Adjustment Act Improvements Act of 2015, this interim final rule incorporates the penalty inflation adjustments for the civil money penalties contained in the Social Security Act.

DATES: This interim final rule is effective on August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Joseph E. Gangloff, Chief Counsel to the Inspector General, Room 3–ME–1, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–4440, both directly and for IPTTY. For information on eligibility or filing for benefits, call the Social Security Administration's national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit the Social Security Administration's Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Social Security Administration (SSA) was established as an independent agency, effective March 31, 1995, under Public Law 103–296, the Social Security Independence and Program Improvements Act of 1994 (SSIPIA). The SSIPIA also created an independent Office of the Inspector General (OIG) to which the Commissioner of Social Security (Commissioner) delegated certain authority for civil monetary penalty (CMP) cases on June 28, 1995.

On November 27, 1995, the OIG published a final rule at 60 FR 58225 establishing a new Part 498 in Title 20 of the Code of Federal Regulations. This Part serves as a repository for SSA's existing CMP regulations, which implemented section 1140 of the Social Security Act (the Act). These regulations were previously located at 42 CFR part 1003.

On April 24, 1996, the OIG published a final rule at 61 FR 18078 to implement SSA's new CMP authority provided under section 206(b) of the SSIPIA, which added section 1129 to the Act, effective October 1, 1994. This authority allows for imposition of penalties and assessments against any individual, organization, agency, or other entity that makes, or causes to be made, a false or misleading statement or representation of a material fact for use in determining initial or continuing rights to Old-Age, Survivors, and Disability Insurance or Supplemental Security Income benefit payments, if the person knew, or should have known, that such statement or representation was false or misleading, or omitted a material fact.

In addition, on May 17, 2006, the OIG published a final rule at 71 FR 28579 implementing the changes in the CMP program required by section 251(a) of Public Law 106–169, the Foster Care Independence Act of 1999 (FCIA), enacted December 14, 1999, and by sections 111, 201, 204, and 207 of Public Law 108–203, the Social Security Protection Act of 2004 (SSPA), enacted March 2, 2004. Section 251(a) of FCIA expanded the authority under section 1129 to impose a civil monetary penalty and assessment for fraud involved in the receipt of benefits by certain World War II veterans. Sections 111, 201, 204, and 207 of SSPA broadened the scope under section 1129 by adding new categories of penalties against (1) representative payees with respect to wrongful conversions, and (2) individuals who withhold the disclosure of material facts to the SSA.

I. The Debt Collection Improvement Act of 1996

In an effort to maintain the remedial impact of civil money penalties (CMPs) and promote compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every four years thereafter for these penalty amounts. The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (i) should apply only to the violations that occur after October 23, 1996—the Act's effective date—and (ii) should not exceed 10 percent of the penalty indicated. In addition to those penalties that fall under the Internal Revenue Code of 1986, the Tariff Act of 1930 and the Occupational Safety and Health Act of 1970, CMPs that come under the Social Security Act were specifically exempted from the requirements of the Debt Collection Improvement Act of 1996.

II. Bipartisan Budget Act of 2015, Section 701: Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

The Bipartisan Budget Act of 2015, Section 701: Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74) (the 2015 Adjustment Act) amends the Federal Civil Penalties Inflation Adjustment Act of 1990 to require Federal agencies that impose CMPs subject to inflation adjustments to adjust the penalties for inflation annually instead of at least once every four years. The 2015 Act expanded the categories of penalties that require adjustment for inflation to include CMPs under the Occupational Safety and Health Act of 1970 and the Social Security Act. The 2015 Adjustment Act further requires affected agencies to adjust the level of CMPs with an initial "catch-up" adjustment through the publication of this interim final rule no later than July 1, 2016, to be effective no later than August 1, 2016. We will identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established or last adjusted in statute or regulation.

III. Initial Catch-Up Adjustment and Calculation for Annual Inflation Adjustments

Based on guidance issued by the Office of Management and Budget (OMB),[1] we will modify the penalty level or range that we identify as needing an initial catch-up based on the percent change between the non-seasonally adjusted Consumer Price Index for All Urban Consumers (CPI–U) for the month of October in the year in which the penalty was established or previously adjusted and the October 2015 CPI–U.[2] We also will use OMB-published multipliers to make these adjustments.[3] This initial catch-up adjustment may not exceed 150 percent of the amount of that penalty on the date of enactment of the 2015 Adjustment Act.[4] The annual inflation adjustment in subsequent years must be a cost-of-living adjustment based on any increases in the October CPI–U (not seasonally adjusted) each year.[5] Inflation adjustment increases must be rounded to the nearest multiple of $1.[6]

IV. Social Security Administration's New Penalty Levels Under the Initial Catch-Up Adjustment

The Social Security Act currently includes three different CMP levels, one under Section 1129, 42 U.S.C. 1320a–8, and two under Section 1140, 42 U.S.C.

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[1] On February 24, 2016, OMB published its memorandum "Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015" (OMB Memorandum M–16–06). The memorandum can be found at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.* The memorandum provides guidance to implement the civil monetary penalty adjustment requirements of Section 701 of Public Law 114–74.

[2] *Id.* at 3.

[3] *Id.* at 6.

[4] *Id.* at 3 and 8.

[5] *Id.* at 1.

[6] *Id.* at 3.

1320b–10. The Section 1129 CMP was established in Section 206(b) of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, 108 Stat. 1509. The Section 1140 CMPs were established in Sec. 428(a) of the Medicare Catastrophic Coverage Act of 1988, Public Law 100–360, 102 Stat. 815.

Our current maximum CMP is $5,000.00 for each violation under Section 1129 of the Social Security Act, $25,000.00 per broadcast or telecast under Section 1140 of the Social Security Act, and $5,000.00 for all other violations under Section 1140 of the Social Security Act. In OMB Memorandum, M–16–06, OMB instructed affected agencies to add an initial inflationary adjustment amount (a "catch-up" amount) to relevant CMPs based on the percent change between the CPI–U for the month of October in the year of the previous adjustment and the October 2015 CPI–U. Based on OMB's guidance, our adjustments to the existing maximum CMPs result in the following new maximum penalties, which will be effective as of August 1, 2016. The information below serves as public notice of the new maximum penalty amounts for 2016; we will not be publishing a separate **Federal Register** Notice for this change. For any future adjustments, we will publish a notice in the **Federal Register** to announce the new amounts.

Section 1129 CMPs

$5,000.00 (current maximum) × 1.59089 (OMB-issued initial adjustment multiplier) = $7,954.00 (new maximum CMP amount-rounded to the nearest dollar).

Section 1140 CMPs

$25,000.00 (current maximum per broadcast or telecast) × 1.97869 (OMB-issued initial adjustment multiplier) = $49,467.00 (new maximum CMP amount-rounded to the nearest dollar).

$5,000.00 (current maximum for all other violations) × 1.97869 (OMB-issued initial adjustment multiplier) = $9,893.00 (new maximum CMP amount-rounded to the nearest dollar).

Regulatory Procedures

Good Cause for Exception to Rulemaking Procedures

Pursuant to sections 205(a), 702(a)(5), and 1631(d)(1) of the Social Security Act, 42 U.S.C. 405(a), 42 U.S.C. 902(a)(5), and 42 U.S.C. 1383(d)(1), the Social Security Administration follows the Administrative Procedures Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations.

The APA provides exceptions to its Notice of Proposed Rulemaking (NPRM) procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of these interim final rules, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the NPRM procedures because doing so would have been impractical given the Congressional mandates.

Public Law 114–74 was signed into law on November 2, 2015. Section 701(b)(1)(D) requires that the Commissioner issue regulations to adjust CMPs through an interim final rulemaking, and requires the initial catch up adjustment to take effect no later than August 1, 2016. Accordingly, to issue these rules as a NPRM would have delayed issuance of final rules well past the required August 1, 2016 effective date. In light of the Congressional mandate that we issue regulations to adjust CMPs through an interim final rulemaking, and that the initial catch up adjustment take effect no later than August 1, 2016, we believe good cause exists for waiver of the NPRM procedures under the APA.

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with OMB and determined that this interim final rule does not meet the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB did not review the interim final rule.

Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis consistent with Public Law 96–354, the Regulatory Flexibility Act, unless the Inspector General certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While the increase in the civil monetary penalties provided for under sections 1129 and 1140 of the Social Security Act might have a slight impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. In either case, we do not anticipate that a substantial number of small entities will be significantly affected by this revised rulemaking. These final rules reflect legislative amendments affecting previously existing sections of the Social Security Act, and do not substantially alter the effect of these sanctions on small business entities. Therefore, we have concluded, and the Inspector General certifies, that a regulatory flexibility analysis is not required for this interim final rule.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 498

Administrative practice and procedure, Fraud.

Gale Stallworth Stone,

Deputy Inspector General of Social Security.

For the reasons set forth in the preamble, we amend 20 CFR part 498 as set forth below:

PART 498—CIVIL MONETARY PENALTIES, ASSESSMENTS AND RECOMMENDED EXCLUSIONS

■ 1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 702(a)(5), 1129, and 1140 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8, and 1320b–10).

■ 2. Amend § 498.103 by adding and reserving paragraph (f), and adding paragraph (g), to read as follows:

§ 498.103 Amount of penalty.

* * * * *

(f) [Reserved]

(g) (1) The amount of the penalties described in paragraphs (a) through (d) of this section are the maximum penalties which may be assessed under these paragraphs for violations made after June 16, 2006, but before August 1, 2016.

(2) (i) After August 1, 2016 penalties are adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), as further amended by the Bipartisan Budget Act of 2015, Section 701: Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74).

(ii) The maximum penalties which may be assessed under this section is the larger of:

(A) The amount for the previous calendar year; or

(B) An amount adjusted for inflation, calculated by multiplying the amount for the previous calendar year by the percentage by which the Consumer Price Index for all urban consumers for the month of October preceding the current calendar year exceeds the Consumer Price Index for all urban consumers for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

(iii) Notice of the maximum penalty which may be assessed under this section for calendar years after 2016 will be published in the **Federal Register** on an annual basis on or before January 15 of each calendar year.

[FR Doc. 2016–13241 Filed 6–24–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2014–F–0232]

Food Additives Permitted in Feed and Drinking Water of Animals; Chromium Propionate; Extension of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension of the comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the final rule, published in the **Federal Register** of June 3, 2016, amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of chromium propionate as a source of chromium in broiler chicken feed. This action is in response to a food additive petition filed by Kemin Industries, Inc. We are taking this action due to maintenance on the Federal eRulemaking portal from July 1 through July 5, 2016.

DATES: The FDA confirms the June 3, 2016, effective date of the final rule that published on June 3, 2016 (81 FR 35610). The comment period for the final rule is extended. Submit either electronic or written comments by July 19, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–F–0232 for "Food Additives Permitted in Feed and Drinking Water of Animals; Chromium Propionate." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Chelsea Trull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *chelsea.trull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 3, 2016 (81 FR 35610), FDA amended the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of chromium propionate as a source of chromium in broiler chicken feed. This action is in response to a food additive petition filed by Kemin Industries, Inc. (Kemin). FDA found no significant environmental impact of this action based on its evaluation of evidence contained in an environmental assessment submitted by Kemin.

Interested persons were originally given until July 5, 2016, to submit comments or written objections and a request for a hearing.

From July 1 through July 5, 2016, the Federal eRulemaking Portal, *http://www.regulations.gov,* is undergoing maintenance. Therefore, we are extending the comment period for the regulations permitting the use of chromium propionate as a source of chromium in broiler chicken feed and for FDA's finding of no significant environmental impact. The extended comment period will close on July 19, 2016.

Dated: June 20, 2016.

Tracey Forfa,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2016–14932 Filed 6–24–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0550]

RIN 1625–AA00

Safety Zone; Bay Village Independence Day Celebration; Lake Erie, Bay Village, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Bay Village, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Bay Village Independence Day Celebration fireworks display on July 4, 2016. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo (COTP).

DATES: This rule is effective from 9:45 p.m. to 10:45 p.m. on July 4, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0550 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email LT Stephanie Pitts, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0128, email *Stephanie.M.Pitts@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency finds good cause that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not provided to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard issues this rule under authority in 33 U.S.C. 1231. On July 4, 2016, between 9:45 p.m. and 10:45 p.m., a fireworks display will be held on the shoreline of Lake Erie in Bay Village, OH, in the vicinity of Cahoon Memorial Park. It is anticipated that numerous vessels will be in the immediate vicinity of the launch point. The Captain of the Port Buffalo has determined that potential hazards associated with this fireworks display poses a significant risk to public safety and property within a 560-foot radius of the launch point. Such hazards include premature and accidental detonations of fireworks, dangerous projectiles, and falling or burning debris.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:45 p.m. to 10:45 p.m. on July 4, 2016. The safety zone will encompass all waters of Lake Erie; Bay Village, OH within a 560-foot radius of position 41°29′23.9″ N. and 081°55′44.5″ W. (NAD 83). The duration of the zone is intended to ensure the safety of spectators and vessels during the Bay Village Independence Day Celebration fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, and will not: Interfere with other agencies; adversely alter the budget of any grant or loan recipients; or raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Under certain conditions, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting for one (1) hour that will prohibit entry within a small area on Lake Erie. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0550 to read as follows:

§ 165.T09–0550 Safety Zone; Bay Village Independence Day Celebration; Lake Erie, Bay Village, OH.

(a) This zone will encompass all waters of Lake Erie; Bay Village, OH within a 560 foot radius of position 41°29′23.9″ N. and 081°55′44.5″ W. (NAD 83).

(b) *Enforcement period.* This regulation will be enforced from 9:45 p.m. until 10:45 p.m. on July 4, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 20, 2016.

B.W. Roche,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2016–15052 Filed 6–24–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0415]

Safety Zones; Captain of the Port Boston Fireworks Display Zone, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Boston Harborfest in Boston Inner Harbor on July 2, 2016, to provide for the safety of life on navigable waterways during the fireworks. Our regulation for Captain of the Port Boston Fireworks display zone, Boston Harbor, Boston, MA identifies the regulated area for this fireworks display. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port or a designated representative.

DATES: The regulation in 33 CFR 165.119(a)(2) will be enforced Saturday, July 2, 2016 from 9 p.m. to 9:45 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Mark Cutter, Sector Boston Waterways Management Division, U.S. Coast Guard; telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 165.119(a)(2) Saturday, July 2, 2016 from 9 p.m. to 9:45 p.m., for the Boston Harborfest in Boston Inner Harbor. This action is being taken to provide for the safety of life on navigable waterways during the fireworks display. Our regulation for Captain of the Port Boston Fireworks display zone, Boston Harbor, Boston, MA, § 165.119(a)(2), specifies the location of the regulated area as all U.S. navigable waters of Boston Inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′41.2″ N. 071°02′36.5″ W. (NAD 1983), located off of Long Wharf, Boston MA. As specified in § 165.119(e), during the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sector Boston (COTP) or a COTP designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.119 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement periods via the Local Notice to Mariners and Broadcast Notice to Mariners.

Dated: June 17, 2016.

C.C. Gelzer,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2016–15090 Filed 6–24–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0276; FRL–9948–19–Region 5]

Determination of Attainment by the Attainment Date; 2008 Ozone National Ambient Air Quality Standards; Cleveland, Ohio and St. Louis, Missouri-Illinois Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a determination, under the Clean Air Act (CAA), that the Cleveland, Ohio (OH) and St. Louis, Missouri-Illinois (MO-IL) areas attained the 2008 ozone National Ambient Air Quality Standards (NAAQS), by the applicable attainment date of July 20, 2016. This determination for each area is based on complete, quality-assured and certified ozone monitoring data for 2013–2015.

DATES: This direct final rule will be effective August 26, 2016, unless EPA receives adverse comments by July 27, 2016. If adverse comments are received by EPA for an affected area, EPA will publish a timely withdrawal of the direct final rule for that area in the **Federal Register** informing the public that the rule will not take effect there.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0276 at *http://www.regulations.gov* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

Deborah Bredehoft, Air Planning and Development Branch, Environmental Protection Agency, Region 7, 11201 Renner Blvd., Lenexa, Kansas 66219, (913) 551–7164, *Bredehoft.Deborah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
II. How does EPA determine whether an area has attained the 2008 ozone standard?
III. What action is EPA taking and what is the rationale?
IV. Statutory and Executive Order Reviews

I. Background

On April 30, 2012, the Cleveland, OH and St. Louis, MO-IL areas were designated as nonattainment for the 2008 ozone NAAQS and were classified as marginal, effective July 20, 2012 (77 FR 30088, May 21, 2012). On March 6, 2015 (80 FR 12264), in the final 2008 ozone NAAQS SIP requirements rule, EPA established an attainment deadline for marginal areas of July 20, 2015.

The CAA section 181(b)(2) requires the EPA to determine, based on an area's ozone design value[1] as of the area's attainment deadline, whether the area has attained the ozone standard by that date. The statute provides a mechanism by which states that meet certain criteria may request and be granted by the EPA Administrator a 1-year extension of an area's attainment deadline.

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[1] An area's ozone design value for the 8-hour ozone NAAQS is the highest 3-year average of the annual fourth-highest daily maximum 8-hour average concentrations of all monitors in the area. To determine whether an area has attained the ozone NAAQS prior to the attainment date, EPA considers the monitor-specific ozone design values in the area for the most recent three years with complete, quality-assured, and certified ozone monitoring data prior to the attainment deadline (or for an earlier 3-year period if the area attains the ozone standard ahead of the attainment deadline).

On May 4, 2016 (81 FR 26697), based on EPA's evaluation and determination that the areas met the attainment date extension criteria of CAA section 181(8)(5), EPA granted the Cleveland and St. Louis areas a 1-year extension of the marginal area attainment date to July 20, 2016.

II. How does EPA determine whether an area has attained the 2008 ozone standard?

Under EPA regulations at 40 CFR part 50, appendix P, the 2008 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 parts per million (ppm). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.075 ppm at each ambient air quality monitoring site within the area, then the area is deemed to be meeting the NAAQS. The rounding convention under 40 CFR part 50, appendix P, dictates that concentrations shall be reported in ppm to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.076 ppm is greater than 0.075 ppm and, therefore, over the standard.

EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's Air Quality System database (formerly known as the Aerometric Information Retrieval System). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of required monitoring days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined according to appendix P of part 50.

III. What action is EPA taking and what is the rationale?

EPA is taking this action pursuant to the agency's statutory obligation under CAA section 181(b)(2) to determine whether the Cleveland and St. Louis nonattainment areas have attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016. In this action, EPA is making a determination that the Cleveland and St. Louis areas attained the 2008 ozone NAAQS by the applicable deadline of July 20, 2016, based upon complete, quality-assured and certified ozone monitoring data for 2013–2015.[2]

EPA evaluated data from air quality monitors in the Cleveland and St. Louis areas in order to determine the areas' attainment status as of the applicable attainment date of July 20, 2016. The data were supplied and quality-assured by state and local agencies responsible for monitoring ozone air monitoring networks. Table 1 displays the 2013–2015 design value for each monitor as well as the fourth high daily maximum 8-hour ozone concentration for each of the three years used to calculate the design value.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND DESIGN VALUE BY MONITOR

Area	County	Monitor	2013 4th high	2014 4th high	2015 4th high	2013–2015 design value
St. Louis, MO-IL	Madison, IL	Alton 171190008	0.072	0.072	0.069	0.071
		Maryville 171190009	0.075	0.070	0.064	0.069
		Wood River 171193007	0.069	0.070	0.069	0.069
		5403 State Road 160 171199991	0.071	0.068	0.067	0.068
	Saint Clair, IL	East Saint Louis 171630010	0.066	0.067	0.066	0.066
	Jefferson, MO	Arnold 290990019	0.069	0.072	0.069	0.070
	Saint Charles, MO.	West Alton 291831002	0.071	0.072	0.070	0.071
		Orchard Farm 291831004	0.071	0.072	0.066	0.069
	Saint Louis, MO	Pacific 291890005	0.067	0.065	0.065	0.065
		Maryland Heights 291890014	0.070	0.072	0.069	0.070
	St. Louis City, MO.	St. Louis 295100085	0.066	0.066	0.063	0.065
Cleveland, OH	Ashtabula	Conneaut 390071001	0.070	0.069	0.070	0.069
	Cuyahoga	891 E. 152 St. 390350034	0.069	0.071	0.067	0.069
		E. 14th & Orange 390350060	0.057	0.066	0.063	0.062
		Berea 390350064	0.064	0.059	0.066	0.063
		Mayfield 390355002	0.065	0.061	0.072	0.066
	Geauga	13000 Auburn 390550004	0.065	0.065	0.073	0.067
	Lake	Eastlake 390850003	0.070	0.075	0.074	0.073
		Painesville 390850007	0.068	0.062	0.070	0.066
	Lorain	Sheffield 390930018	0.060	0.067	0.062	0.063
	Medina	Ballash Road 391030004	0.065	0.064	0.063	0.064
	Portage	1570 Ravenna Rd. 391331001	0.058	0.061	0.064	0.061
	Summit	Akron 391530020	0.060	0.058	0.065	0.061

All monitoring sites in the Cleveland and St. Louis areas had design values less than 0.075 ppm based on the 2013–2015 monitoring period. Thus, EPA is determining, in accordance with section 181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), that these areas attained the standard by the applicable attainment date of July 20, 2016. EPA's determination is based upon three years of complete, quality-assured and certified data.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve each determination if relevant adverse written comments are filed. This rule will be effective August 26, 2016 without further notice unless we receive relevant adverse written comments by July 27, 2016. If we receive such comments, we will withdraw this action, for any affected area, before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that, if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective August 26, 2016.

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[2] These determinations of attainment do not constitute a redesignation to attainment. Redesignations require states to meet a number of additional criteria, including EPA approval of a state plan to maintain the air quality standard for 10 years after redesignation.

IV. Statutory and Executive Order Reviews

Under section 181(b)(2) of the CAA, a determination of attainment is a factual determination based upon air quality considerations. These determinations of attainment would, if finalized, result in the suspension of certain Federal requirements. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications because it will not have a substantial direct effect on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Determinations of attainment do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 26, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 15, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

Dated: June 3, 2016.

Mark Hague,

Regional Administrator, Region 7.

Part 52, chapter I, title 40 of Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.726 is amended by adding paragraph (qq) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(qq) *Determination of attainment.* As required by section 181(b)(2)(A) of the Clean Air Act, EPA has determined that the St. Louis, MO-IL marginal 2008 ozone nonattainment area has attained the NAAQS by the applicable attainment date of July 20, 2016.

■ 3. Section 52.1342 is amended by adding paragraph (d) to read as follows:

§ 52.1342 Control strategy: Ozone.

* * * * *

(d) *Determination of attainment.* As required by section 181(b)(2)(A) of the Clean Air Act, EPA has determined that the St. Louis, MO-IL marginal 2008 ozone nonattainment area has attained the NAAQS by the applicable attainment date of July 20, 2016.

■ 4. Section 52.1885 is amended by adding paragraph (oo) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(oo) *Determination of attainment.* As required by section 181(b)(2)(A) of the Clean Air Act, EPA has determined that the Cleveland, OH marginal 2008 ozone nonattainment area has attained the NAAQS by the applicable attainment date of July 20, 2016.

■ 5. Section 52.1892 is amended by adding paragraph (g) to read as follows:

§ 52.1892 Determination of attainment.

* * * * *

(g) As required by section 181(b)(2)(A) of the Clean Air Act, EPA has determined that the Cleveland, OH marginal 2008 ozone nonattainment area has attained the NAAQS by the applicable attainment date of July 20, 2016. This determination is based on complete, quality-assured and certified data for the 3-year period 2013–2015.

[FR Doc. 2016–15050 Filed 6–24–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0366; FRL–9948–21–Region 5]

Air Plan Approval; Minnesota; Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for the Flint Hills Resources, LLC Pine Bend Refinery (FHR) as submitted on May 1, 2015. The revision will consolidate existing permanent and enforceable SO_2 SIP conditions into the facility's joint Title I/Title V SIP document. This action highlights process modifications necessary to meet EPA's Tier 3 gasoline sulfur standards; a comprehensive monitoring strategy to better quantify SO_2 emissions from fuel gas-fired emission units; a new restrictive flaring procedure for refinery process units, and other updates and administrative changes. This revision results in a modeled reduction in SO_2 emissions from FHR and modeled SO_2 ambient air concentrations less than half of the national ambient air quality standards (NAAQS).

DATES: This direct final rule will be effective August 26, 2016, unless EPA receives adverse comments by July 27, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0366 at *http://www.regulations.gov* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
  A. EPA's Tier 3 Gasoline Standards
  B. Administrative Order and Title I SO_2 SIP Conditions
II. What is EPA's analysis of the SIP revision?
  A. EPA's Tier 3 Gasoline Standards
  B. Administrative Order and Title I SO_2 SIP Conditions
  C. Miscellaneous Revisions
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. What is the background for this action?

A. EPA's Tier 3 Gasoline Standards

On April 28, 2014 (79 FR 23414 and amended on April 22, 2016, at 81 FR 23641), EPA established more stringent vehicle emissions standards to reduce the sulfur content of gasoline beginning January 1, 2017. The Tier 3 gasoline fuel standards (Tier 3 standards) will reduce both tailpipe and evaporative emissions from both new and existing passenger cars, light-duty trucks, medium-duty passenger vehicles, and some heavy-duty vehicles. This will result in significant reductions in pollutants such as ozone, particulate matter, and air toxics across the country and help state and local agencies in their efforts to attain and maintain health-based NAAQS.

In order to meet the Tier 3 standards, FHR plans to increase its use of hydrotreating to remove sulfur from intermediate fuel products. The increased hydrotreating will also increase the removal of nitrogen. To address the increased removal of nitrogen and sulfur, FHR proposes to install a process to convert gas containing sulfur and nitrogen into a salable, non-hazardous, aqueous liquid fertilizer: ammonium thiosulfate (ATS).

B. Administrative Order and Title I SO_2 SIP Conditions

Minnesota also requested EPA's approval of the transfer of Title I SO_2 SIP conditions from an Administrative Order (Order) into the FHR Title I/Title V SO_2 SIP document. Until 1990, Minnesota Pollution Control Agency (MPCA) had placed SIP control measures in permits issued to culpable sources. In 1990, EPA determined that limits in state-issued permits were not federally enforceable because the permits expired. Subsequently, MPCA then issued permanent Orders to affected sources in nonattainment areas from 1991 to February of 1996.

In 1995, EPA approved into the Minnesota SIP Minnesota's consolidated permitting regulations. (60 FR 21447, May 2, 1995). The consolidated permitting regulations included the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A "Title I condition" is defined, in part, as "any condition based on source-specific determination of ambient impacts imposed for the purpose of achieving or maintaining attainment with a national ambient air quality standards and which was part of a [SIP] approved by the EPA or submitted to the EPA pending approval under section 110 of the act . . . ." MINN. R. 7007.1011 (2013). The regulations also state that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit." MINN. R. 7007.0450 (2007).

Minnesota has initiated using the joint Title I/Title V document as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the joint Title I/Title V document submitted by MPCA are cited as "Title I conditions," therefore ensuring that SIP requirements remain permanent and enforceable. EPA reviewed the state's procedure for using joint Title I/Title V documents to implement site-specific SIP requirements and found it to be acceptable under both Title I and Title V of the Clean Air Act (CAA) (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA).

FHR's SIP obligations are currently contained in an Order that was adopted by MPCA on August 29, 2011, and approved by EPA on May 15, 2013 (78 FR 28501) (FHR Order). On May 1, 2015, MPCA submitted revisions to the Minnesota SO_2 SIP for FHR. MPCA requested that EPA approve into the SIP, the Title I SO_2 SIP conditions contained in the joint Title I/Title V document while removing the FHR Order from the SIP. In addition to incorporating FHR's current SO_2 SIP obligations into the facility's joint Title I/Title V document, MPCA requested approval of additional changes to the Minnesota SO_2 SIP.

II. What is EPA's analysis of the SIP revision?

A. EPA's Tier 3 Gasoline Standards

Title I SO_2 SIP conditions have been created for the ATS process unit, which include hourly and annual emissions limits, as well as monitoring, record keeping, and reporting requirements for the ATS process unit. The ATS unit will take H_2S and ammonia from sour water streams and convert them into ATS, which will then be sold as fertilizer. The unit is being constructed in conjunction with FHR's plan to meet EPA's Tier 3 fuel standards. The ATS unit will allow FHR to utilize the increased amounts of sulfur and nitrogen removed from intermediate fuel products by gas-oil hydrotreaters by combining them into ATS.

Review of the technical support document and computer modeling reports submitted by MPCA shows that installation of the ATS unit in conjunction with the other updates to the facility will not cause an exceedance of the modeled SO_2 standards. The data show that SO_2 emissions will be between 6 and 8 percent less than emissions from the facility modeled under the last SIP revision. Using AERMOD and including FHR and nearby sources, the modeled ambient air concentrations of SO_2 for the 3-hour, 24-hour, and annual SO_2 NAAQS for these revisions are at 41.5%, 48.5%, and 27.5% of the standards, respectively. Therefore, the addition of Title I SO_2 SIP requirements for the ATS unit is acceptable and the revisions to the FHR SIP are approvable.

B. Administrative Order and Title I SO_2 SIP Conditions

On March 17, 2015, MPCA amended the operating permit for FHR (Air Emissions Permit No. 03700011–012). This joint Title I/Title V document incorporates, as Title I SO_2 SIP conditions, FHR's SIP obligations which had previously been listed in the FHR Order. This is approvable because those conditions have already been approved into Minnesota's SO_2 SIP and are merely being moved into the FHR joint Title I/Title V document to provide the source with a single enforceable document. Upon the effective date of EPA approval of the Title I SO_2 SIP conditions into the FHR SIP, the Order will be revoked as stipulated in a May 1, 2015, Administrative Order from MPCA. As part of this action, EPA is approving the revocation of the Order from the Minnesota SO_2 SIP.

C. Miscellaneous Revisions

Finally, Minnesota is requesting that EPA approve several changes to the existing SIP for FHR. These changes include:

—Changing "company" to "permittee" which is acceptable because moving the pertinent Title I SO_2 SIP conditions from the Order to the FHR permit means the term to describe FHR would change to reflect the move.

—Amendments to allow the use of ultra-low sulfur diesel, which can be considered fuel oil, to be combusted at FHR. This revision clarifies the rule, and is acceptable.

—Removing operating hour limits on diesel powered units because, with the availability of ultra-low sulfur diesel, these units qualify as insignificant sources of SO_2. Therefore the operating hours limits on these units are no longer required. This revision is approvable.

—Inclusion of the phrase "in conjunction with oxidation gases from OSWTP equipment" to indicate that the oil separation and waste treatment plant gases, which are allowed to be combusted from one oxidizer at a time, are able to be combusted along with natural gas. This amendment merely clarifies the requirement, and is acceptable.

—Changing 'continuous monitoring system (CMS)' to 'continuous emission monitoring system (CEMS)', and by adding a total sulfur CEMS on the 45-unit mix drum as an operating condition. The revision and addition are approvable because they clarify the rule language, and the addition of the CEMS on the 45-unit mix drum helps FHR more accurately quantify the sulfur emissions from the unit.

—Inclusion of more restrictive language that indicates the flare system is to be used only for unplanned and infrequent events resulting from malfunctions. The amended language also excludes flaring gases from normal operation, including gases from scheduled startups and shutdowns of refinery process units. This amendment is acceptable since it clarifies the condition's applicability and creates more stringent conditions for flare use at FHR.

—Removing the Merox process incinerator from the Title I SO_2 SIP conditions because the Merox process incinerator was decommissioned and removed. The removal of the unit was approved by EPA in a prior rulemaking (78 FR 28501). The conditions were also amended to add the new ATS unit, which will be discussed in more detail later in this document. These revisions are acceptable because SO_2 emissions will be reduced at the facility as a result of these changes.

—Replacing the phrase "total reduced sulfur CMS" with "reduced sulfur and total sulfur CEMS," reflecting the more comprehensive fuel gas sulfur continuous emission monitoring system installed at the facility. This revision is approvable.

—Replacing the acronym "CMS" with "CEMS," which is approvable because it clarifies that the acronym stands for a continuous emission monitoring system. Continuous monitoring requirements were also amended to include language to show that FHR will maintain a CEMS for the 45-unit mix drum that will measure total sulfur from the mix drum fuel gas stream, and that the CEMS will provide a continuous record of measurement in parts per million. This revision is approvable because it ensures that the 45-unit mix drum will be comprehensively monitored for sulfur emissions. Lastly, this section was revised to clarify the list of fuels that would require contract guarantees for H_2S and heat content for compliance demonstration purposes, which is approvable because it clarifies the requirement for the facility.

—Updating the language of the quarterly reporting requirements to reflect current emissions monitoring and report submittal requirements. This revision is acceptable because it clarifies what FHR must submit in its reporting to MPCA.

—Throughout the joint document, the term "the Company" has been replaced with "the Permittee" which is acceptable because it reflects the location of FHR's Title I SO_2 SIP conditions within the joint document instead of within Orders.

—In the portions of the joint document dealing with continuous monitoring requirements and recordkeeping requirements, references to the term "hydrogen sulfide" have been replaced with "sulfur content" to reflect the more comprehensive monitoring strategy approved for FHR.

—Requirements for fuel gas SO_2 emissions from the 41- and 45-unit mix drums have been made Title I SO_2 SIP conditions, including use of SO_2 CEMS monitoring systems and associated recordkeeping requirements. The revisions are acceptable because the new CEMS monitor sulfur emissions more comprehensively, providing a more accurate analysis of FHR's SO_2 emissions from the 41- and 45-unit mix drums. In a related revision, continuous monitoring requirements for H_2S in SIP emission units have been revised to become total reduced sulfur, which is approvable because the new monitors more comprehensively indicate SO_2 emissions from these units. It should be noted that H_2S monitoring required for new source performance standards (NSPS) for petroleum refineries are not affected by these revisions as H_2S monitoring will continue for these units in addition to the comprehensive sulfur monitoring described above.

—Removal of H_2S CMS requirements from FHR's Title I SO_2 SIP, because the new SO_2 and total sulfur CEMS supersede the need for H_2S CMSs for the facility and because the H_2S monitor requirements will remain as non-SIP level requirements in order to meet the NSPS for petroleum refineries. Therefore, this revision is approvable.

—The H_2S 3-hour rolling average limit for the 45H6 stack has been made a Title I SO_2 SIP condition, which is approvable because the condition becomes permanent and federally enforceable.

—Language has been removed from the SO_2 limits for the #1 Vac Heater, #1 Crude Heater atmospheric distillation unit, and #1 and #2 Coker Heaters that had indicated the limits were effective as of EPA's approval of the ninth revision to the Order (which EPA approved on May 15, 2013 at 78 FR 28501). Because the revision simply removes language that is no longer necessary, the revision is acceptable.

—The recordkeeping requirements for start and stop times for emissions units 032, 033, 037, and 038 (Steam/Air Heater Decoking units 21H–1, 21H–2, 23H–1, and 23H–2, respectively) have been made Title I SO_2 SIP conditions. This is acceptable because it allows recordkeeping requirements for these units to be federally enforceable.

—The diesel fuel certification recordkeeping requirement for the plan air compressor diesel engine has been made a Title I SO_2 SIP condition, and a typo was corrected in the requirement. These revisions are approvable because it allows federal enforceability of recordkeeping to show FHR uses ultra-low sulfur diesel fuel in the plant air compressor diesel engine.

—An amendment to the requirements for the Oil Separation and Waste Treatment Plant to streamline the requirements for burning natural gas in conjunction with oxidation of gases from the treatment plant equipment. The revision does not decrease the stringency of the requirements but makes the requirements easier to understand, and is therefore acceptable.

—Requirements for Boiler B–10, including Title I SO_2 SIP conditions, have been removed from the FHR SIP because the boiler was never installed. This revision is acceptable because the source that the regulation is meant to address does not exist and will not exist.

III. What action is EPA taking?

EPA is approving a revision to the SIP for FHR, as submitted by MPCA on May 1, 2015. The revision will consolidate existing permanent and enforceable SO_2 SIP conditions into the facility's joint Title I/Title V SIP document and simultaneously remove the existing FHR Order from the SIP. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective August 26, 2016 without further notice unless we receive relevant adverse written comments by July 27, 2016. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective August 26, 2016.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Minnesota Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 26, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 21, 2016.

Robert Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.1220, the table in paragraph (d) is amended by revising the entry for "Flint Hills Resources Pine Bend, LLC" to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
* *	*	*	*	* *
Flint Hills Resources Pine Bend, LLC.	03700011–012	03/17/15	06/27/16, [Insert **Federal Register** citation].	Only conditions cited as "Title I Condition: 40 CFR Section 50.4, SO_2 SIP; Title I Condition: 40 CFR pt. 52, subp. Y".
* *	*	*	*	* *

* * * * *

[FR Doc. 2016–15038 Filed 6–24–16; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 672 and 681

RIN 3145–AA58

Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

AGENCY: National Science Foundation.

ACTION: Interim final rule.

SUMMARY: The National Science Foundation (NSF or Foundation) is adjusting the maximum civil monetary penalties that may be imposed for violations of the Antarctic Conservation Act of 1978 (ACA), to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

DATES: Effective August 1, 2016.

ADDRESSES: You may submit comments, identified by RIN 3145–AA58. Comments should be submitted by any of the following methods:

1. Internet—Send comments via email to *bgilansh@nsf.gov.*
2. Fax—(703)292–9242.

FOR FURTHER INFORMATION CONTACT: Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, at 703–292–8060, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

SUPPLEMENTARY INFORMATION: The 2015 Act requires agencies to: (1) Adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation. Inflation adjustments will be based on the percent change in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment, relative to the October CPI–U in the year of the previous adjustment. The only civil monetary penalties within NSF's jurisdiction are those authorized by the Antarctic Conservation Act of 1978 (ACA), 16 U.S.C. 2401, *et seq.*, and the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801, *et seq.*

Initial Adjustments Under the ACA and PFCRA

For the first adjustment made in accordance with the 2015 Act, the amount of the adjustment is calculated based on the percent change between the CPI–U for October of the last year in which penalties were previously adjusted (not including any adjustment made pursuant to the Inflation Adjustment Act before November 2, 2015), and the CPI–U for October 2015. The 10 percent cap on adjustments imposed by the Debt Collection Improvement Act of 1996 has been eliminated by the 2015 Act. Instead, the 2015 Act imposes a cap on the amount of this initial adjustment, such that the amount of the increase may not exceed 150 percent of the pre-adjustment penalty amount or range. As a result, the total penalty amount or range after the initial adjustment under the 2015 Act may not exceed 250 percent of the pre-adjustment penalty amount or range.

For purposes of the initial adjustment of the ACA's penalties under the 2015 Act, Congress last set or adjusted the amount of civil penalties in 1978. Between October 1978 and October 2015, the CPI–U has increased by 354.453 percent. The post-adjustment penalty amount or range is obtained by multiplying the pre-adjustment penalty amount or range by the percent change in the CPI–U over the relevant time period, and rounding to the nearest dollar. Therefore, the new, post-adjustment maximum penalty under the ACA for violations is $5,000 × 3.54453 = $17722.65, which rounds to $17723. The new, post-adjustment maximum penalty for knowing violations is $10,000 × 3.54453= $35,445.30, which rounds to $35,445. The new, post-adjustment penalties are greater than 250 percent of the pre-adjustment penalties, so the limitation on the amount of the adjustment is implicated. Therefore, the maximum penalty under the ACA after August 1, 2016 will be $16,250 ($6500 × 2.5) for violations and $27,500 ($11,000 × 2.5) for knowing violations.

For purposes of the initial adjustment under the 2015 Act, Congress last set or adjusted the amount of PFCRA civil penalties in 1986. Between October 1986 and October 2015, the CPI–U has increased by 215.628 percent. The post-adjustment penalty amount or range is obtained by multiplying the pre-adjustment penalty amount or range by the percent change in the CPI–U over the relevant time period, and rounding to the nearest dollar. Therefore, the new, post-adjustment maximum penalty under the PFCRA is $5,000 × 2.15628 = $10,781.40, which rounds to $10,781. The new, post-adjustment penalties are less than 250 percent of the pre-adjustment penalties, so the limitation on the amount of the adjustment is not implicated. Therefore, the maximum penalty under the PFCRA for claims or statements made after August 1, 2016 will be $10,781.

Subsequent Annual Adjustments

The 2015 Act also requires agencies to make annual adjustments to civil penalty amounts no later than January 15 of each year following the initial adjustment described above. For subsequent adjustments made in accordance with the 2015 Act, the amount of the adjustment is based on the percent increase between the CPI–U for the month of October preceding the date of the adjustment and the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment. If there is no increase, there is no adjustment of civil penalties. Therefore, if NSF adjusts penalties in January 2017, the adjustment will be calculated based on the percent change between the CPI–U for October 2016 (the October immediately preceding the date of adjustment) and October 2015 (the October one year prior to October 2016). NSF will publish the amount of these annual inflation adjustments in the **Federal Register** no later than January 15 of each year, starting in 2017.

Public Participation

This interim final rule is being issued without prior public notice or opportunity for public comments. The 2015 Act's amendments to the Inflation Adjustment Act require the agency to adjust penalties initially through an interim final rulemaking, which does not require the agency to complete a notice and comment process prior to promulgating the interim final rule. The amendments also explicitly require the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553 (the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment). Additionally, the formula used for adjusting the amount of civil penalties is given by statute, with no discretion provided to the NSF regarding the substance of the adjustments. NSF is charged only with performing ministerial computations to determine the amount of adjustment to the civil penalties due to increases in the Consumer Price Index for all Urban Consumers (CPI–U).

Environmental Impact

This interim final rule only makes conforming changes to the Foundation's regulations to reflect inflationary adjustments to its civil monetary penalties required by the 2015 Act.

No Takings Implications

NSF has determined that this interim final rule will not involve the taking of private property pursuant to E.O. 12630.

Civil Justice Reform

NSF has considered this interim final rule under E.O. 12988 on civil justice reform and determined the principles underlying and requirements of E.O. 12988 are not implicated.

Federalism and Consultation and Coordination With Indian Tribal Governments

NSF has considered this interim final rule under the requirements of E.O. 13132 on federalism and has determined that the interim final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Foundation has determined that no further assessment of federalism implications is necessary.

Moreover, NSF has determined that promulgation of this interim final rule does not require advance consultation with Indian Tribal officials as set forth in E.O. 13175, Consultation and Coordination with Indian Tribal Governments.

Energy Effects

NSF has reviewed this interim final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use and has determined that this final rule does not constitute a significant energy action as defined in the E.O.

Regulatory Planning and Review

This interim final rule has not been designated a "significant regulatory action," under Executive Order 12866. The interim final rule only makes inflation adjustments to NSF's civil monetary penalties.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), NSF has assessed the effects of this interim final rule on State, local, and Tribal governments and the private sector. This interim final rule will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects

45 CFR Part 672

Administrative practice and procedure, Antarctica.

45 CFR Part 681

Civil remedies; Program fraud.

For the reasons set out in the preamble, 45 CFR parts 672 and 681 are amended as follows:

PART 672—ENFORCEMENT AND HEARING PROCEDURES

■ 1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 2401 *et seq.*, 28 U.S.C. 2461 note.

■ 2. Revise § 672.24 to read as follows:

§ 672.24 Maximum civil monetary penalties for violations.

(a) For violations occurring prior to August 1, 2016, the maximum civil penalty is $6500 for any violation and $11,000 for knowing violations.

(b) For violations occurring after August 1, 2016, but before January 1, 2017, the maximum civil penalty is adjusted to $16,250 for any violation and $27,500 for knowing violations.

(c) For violations occurring on or after January 1, 2017, the maximum penalty, which may be assessed under Part 672 of the title, is the larger of:

(1) The amount for the previous calendar year, or

(2) An amount adjusted for inflation, calculated by multiplying the amount for the previous calendar year by the percentage by which the CPI–U for the month of October preceding the current calendar year exceeds the CPI–U for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

(d) Notice of the maximum penalty which may be assessed under Part 672 of this title for calendar years after 2016 will be published by the NSF in the **Federal Register** on an annual basis on or before January 15 of each calendar year.

PART 681—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 3. The authority citation for part 681 continues to read as follows:

Authority: 31 U.S.C. 3801 *et seq.*

■ 4. In § 681.3, add paragraphs (f) and (g) to read as follows:

§ 681.3 What is the basis for the imposition of civil penalties and assessments?

* * * * *

(f) For claims or statements made on or after August 1, 2016, but before January 1, 2017, the maximum penalty which may be assessed under Part 681 of the title is $10,781. For claims or statements made on or after January 1, 2017, the maximum penalty which may be assessed under Part 681 of the title is the larger of:

(1) The amount for the previous calendar year, or

(2) An amount adjusted for inflation, calculated by multiplying the amount for the previous calendar year by the percentage by which the CPI–U for the month of October preceding the current calendar year exceeds the CPI–U for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

(g) Notice of the maximum penalty, which may be assessed under Part 681 of this title for calendar years after 2016, will be published by NSF in the **Federal Register** on an annual basis on or before January 15 of each calendar year.

National Science Foundation.

Dated: June 16, 2016.

Lawrence Rudolph,

General Counsel.

[FR Doc. 2016–14795 Filed 6–24–16; 8:45 am]

BILLING CODE 7555–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 16–648; MB Docket No. 14–236; RM–11739 and MB Docket No. 14–257; RM–11743]

Radio Broadcasting Services; Bogata, Texas and Wright City, Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Charles Crawford, the Audio Division amends the FM Table of Allotments, by allotting Channel 247A at Bogata, Texas and Channel 295A at Wright City, Oklahoma. A staff engineering analysis indicates that FM Channel 247A can be allotted at Bogata, Texas at the following reference coordinates: 33–33–21 NL and 95–18–28 WL. FM Channel 295A can be allotted at Wright City, Oklahoma, at the following reference coordinates: 34–04–44 NL and 94–51–15 WL.

DATES: Effective July 25, 2016.

FOR FURTHER INFORMATION CONTACT: Nazifa Sawez, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 14–236 and 14–257, adopted July 9, 2016, and released July 10, 2016. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments, is amended by:

■ a. Under Oklahoma, adding, in alphabetical order, Wright City, Channel 295A.

■ b. Under Texas, adding, in alphabetical order, Bogata, Channel 247A.

[FR Doc. 2016–14934 Filed 6–24–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

[Docket Number: FMCSA–2016–0128]

RIN 2126–AB93

Federal Civil Penalties Inflation Adjustment of 2015

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule.

SUMMARY: FMCSA amends the civil penalties listed in its regulations to ensure that the civil penalties assessed or enforced by the Agency reflect the statutorily mandated ranges as adjusted for inflation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), FMCSA is required to promulgate a catch-up adjustment through an interim final rule. Pursuant to the Administrative Procedure Act, FMCSA finds that good cause exists for immediate implementation of this interim final rule because prior notice and comment are unnecessary, per the specific provisions of the 2015 Act.

DATES: This interim rule is effective on August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. LaTonya Mimms, Enforcement Division, by email at *civilpenalty@dot.gov* or phone at 202–366–0991. Office hours are from 8:00 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose and Summary of the Major Provisions

This interim final rule (IFR) adjusts the amount of FMCSA's civil penalties to account for inflation as directed by the 2015 Act. The specific inflation adjustment methodology is described later in this document.

B. Benefits and Costs

The changes imposed by this IFR affect the civil penalty amounts, which are considered by the Office of Management and Budget (OMB) Circular A–4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. By definition they are not considered in the monetization of societal costs and benefits of rulemakings. Congress stated in the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act) that increasing penalties over time will "maintain the deterrent effect of civil monetary penalties and promote compliance with the law." [1] Therefore, with this continued deterrence, FMCSA infers that there may be some safety benefits that occur due to this IFR. The deterrence effect of increasing penalties, which Congress has recognized, cannot be reliably quantified into safety benefits, however.

II. Legal Basis for the Rulemaking

A. Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

This rulemaking is based primarily on the 2015 Act, Public Law 114–74, title VII, § 701, 129 Stat. 599, 28 U.S.C. 2461 note (Nov. 2, 2015). The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act) (28 U.S.C. 2461 note). The basic findings and purpose of the amended 1990 Act remain unchanged and include supporting the role civil penalties play in federal law and regulations in deterring violations by allowing for regulatory adjustments to account for inflation. The changes based on the 2015 Act amend sections four, five, six, and also add a new section seven. The effective provisions relevant to this rulemaking will be discussed in turn.

Under section four, agencies must adjust their civil monetary penalties and publish such adjusted penalties in the **Federal Register** by July 1, 2016, while utilizing an initial "catch-up" adjustment through an IFR to be effective no later than August 1, 2016. This IFR satisfies the catch-up requirement. Subsequent annual adjustments are also required. Agencies can determine that a provision or provisions be exempt from these adjustments based on certain criteria through a notice and comment rulemaking, though OMB must concur in the determination (*Id.* at subsection (c)). FMCSA is not seeking an exemption under section 4(c).There is also a provision to account for a situation where other adjustments are made that go above those required by the 2015 Act. If this is the case, then no adjustments are needed that year (*Id.* at subsection (d)).

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[1] 28 U.S.C. 2461 note (Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890).

Section five outlines the procedure for applying cost of living increases to adjust penalties. As with section four, section five addresses both initial and subsequent adjustments based on the definition of cost of living adjustment (COLA). For initial adjustments, COLA is defined as the difference between the consumer price index (CPI) for October 2015 and the CPI for October of the year the penalty was "adjusted or established under a provision of law, other than the 2015 Act" (*Id.* at subsection 5(b)(2)). FMCSA interprets the phrase "under a provision of law" to include both statutorily mandated adjustments prior to the 2015 Act and those penalties initially promulgated through rulemaking. This is a reasonable interpretation, as many penalties are initially prescribed by statute and subsequently adjusted over time through the regulatory process. In addition, such a reading is consistent with the interpretation contained in guidance provided by OMB as further discussed in the Background section, below. Subsequent adjustments are based on increasing the civil penalty or range of penalties by the COLA using the difference in the CPI between the month of October preceding the date of adjustment and the month of October one year previously (*Id.* at subsection (a) and (b)(1)).

The 2015 Act also amended provisions of the Debt Collection Improvement Act of 1996 (DCIA) Public Law 104–134, 110 Stat 1321, 28 U.S.C. 2461 note (April 26, 1996), which amended the 1990 Act. Most importantly, the DCIA had previously provided that the first adjustment of a civil monetary penalty may not exceed 10 percent of such penalty. This 10 percent cap provision was rescinded by the 2015 Act (*Id.* at subsection (c)). Under section six of the 1990 Act, the period of time covered by increases to civil penalties has been revised. Previously, adjustments to civil penalties were applied only to violations that occurred after the date the increases took effect. The 2015 Act revised section six to read, "Any increase under this Act in a civil monetary penalty shall apply only to the civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect." By adding the phrase "including those [penalties] whose associated violation *predated* such increase," if a violation took place before the effective date of the adjusted penalty, and the agency then issued a notice of claim proposing a penalty after the effective date, the new adjusted penalty level would be assessed.

In previous enforcement cases on administrative review, the FMCSA Assistant Administrator has stated that, for various purposes, a penalty will not be deemed "assessed" until the date that the Agency issues its Final Agency Action. *In re Mittlestadt Trucking, LLC,* FMCSA–2007–0058, at page 3 (Second Interim Order, May 4, 2012); *In re America Express, Inc. d/b/a Mid America Express,* FMCSA–2001–9836, at footnote 24 (Final Order, May 23, 2005). Before the issuance of the Final Agency Action, the penalty is merely a proposed penalty. The question therefore arises whether section six of the 1990 Act, as amended by the 2015 Act, requires that proposed penalties in open cases, in which a notice of claim has been issued but which have not been formally reduced to an "assessment" through order of the Assistant Administrator or other Final Agency Order, must be adjusted.

Section 521(b)(2)(D) of Title 49, U.S. Code, requires FMCSA to calculate each civil penalty assessment to induce further compliance. FMCSA has concluded that, for those open enforcement matters in which a penalty was proposed before the date of the "catch-up" adjustment or an annual adjustment but in which a Final Agency Action has not been issued, recalculating the amount of the proposed penalty would not induce further compliance, and would thus be contrary to the goal of 49 U.S.C. 521(b)(2)(D). Moreover, the length of time between the date that a person is notified of the amount of the proposed penalty and the issuance of the Final Agency Action can vary, but is sometimes several years, depending on litigation schedules and other factors. Applying an inflation adjustment to proposed penalties in cases long awaiting administrative review could raise questions of equity. FMCSA therefore will not retroactively adjust the proposed penalty amounts in notices of claim issued prior to the effective date. Otherwise, the 2015 Act applies prospectively, and does not retroactively change previously assessed or enforced penalties an agency is actively collecting or has collected.

While the statutory language speaks to only increases in penalty amounts, FMCSA will assess the new penalty both in cases where the penalty increases and where it decreases. This aligns with the intent of the statute, which is to ensure penalty amounts properly reflect inflation. Congress likely did not envision a scenario where penalty amounts would be decreased pursuant to the 2015 Act, which explains the use of the term "increases" in the statutory language.

Based on new section seven, oversight and reporting requirements apply. First, OMB must provide annual guidance by December of each year on implementing the 2015 Act (*Id.* at subsection (a)). In response to this provision, OMB has provided guidance to agencies regarding the methodology to follow to implement adjustments required under the 2015 Act, as further discussed in the Background section, below. Agencies must report civil penalty adjustments through their Agency Financial Report required under OMB Circular A–136 or its successor (*Id.* at subsection (b)). Last, the Comptroller General is required to report to Congress regarding compliance with the 2015 Act (*Id.* at subsection (c)).

B. Administrative Procedure Act (APA)

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the APA, as provided in 5 U.S.C. 553(b) and (c). The APA, in 5 U.S.C. 553(b)(3)(B), provides an exception from these requirements when notice and public comment procedures are "impracticable, unnecessary, or contrary to the public interest." FMCSA finds that prior notice and comment is unnecessary because section 4 of the 2015 Act specifically requires the initial catch-up adjustment to be accomplished through an IFR. While prior notice and comment is not required, FMCSA will accept comments on any errors that may be found in this document. We note, however, that the penalty adjustments, and the methodology used to determine the adjustments, are set by the terms of the 2015 Act, and FMCSA has no discretion to make changes in those areas.

III. Background

A. Method of Calculation

OMB published a memorandum on February 24th, 2016, providing guidance to the Agencies for implementation of the 2015 Act (OMB implementation guidance, *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf*). The OMB implementation guidance detailed a method of calculating inflation adjustments that differs substantially from the methods used in past inflation adjustments under the 1990 Act. Previous adjustments were conducted under rules that required significant rounding of figures. For example, in the case of penalties greater than $1,000 but less than or equal to $10,000, the penalty inflation increment would be rounded to the nearest multiple of $1,000. While this allowed penalties to be kept at round numbers, it meant that penalties would often not be increased at all if the inflation increment was not large enough. Furthermore, first-time increases to penalties were capped at 10 percent. Over time, this approach caused some penalties to lose value relative to total inflation. Alternatively, in some instances the prescribed approach resulted in the rounding up of the inflation increment, thus causing the total penalty amount to increase in value relative to total inflation.

The 2015 Act has removed these rounding rules; now, penalties are simply rounded to the nearest $1. While this creates penalty values that are no longer round numbers, it does ensure that penalties will be increased each year to a figure commensurate with the actual calculated inflation. Furthermore, the 2015 Act "resets" the inflation calculations by excluding prior inflationary adjustments under the 1990 Act, which contributed to a change in the real value of penalty levels. This means the inflationary adjustments made by FMCSA in 2015,[2] 2007,[3] and 2003[4] have been disregarded for purposes of determining the baseline year to perform the calculations for this interim final rule. As a result of the new approach required by the 2015 Act, some of the penalty amounts will increase in value relative to the current codified amount, and some penalty amounts will decrease in value. The 2015 Act requires agencies to identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established (*i.e.,* originally enacted by Congress) or last adjusted other than pursuant to the 1990 Act.

The FMCSA thoroughly reviewed its civil penalties. This IFR sets forth the initial "catch-up" adjustment required by the 2015 Act, as shown in the table below. The first column provides a description of the penalty and its location in 49 CFR part 386. The second column ("Legal Authority") provides the United States Code (U.S.C.) statutory citation. In the third column ("Current Penalty"), FMCSA lists the existing codified penalty. The fourth column ("Baseline Penalty") provides the penalty amount as enacted by Congress or changed through a mechanism other than the 1990 Act. The fifth column ("Baseline Penalty Year") lists the year in which the baseline penalty was enacted by Congress or changed through a mechanism other than the 1990 Act. The sixth column ("Multiplier") lists the multiplier used to adjust the CPI for all urban consumers (CPI–U) of the baseline penalty year to the CPI–U for the current year. The OMB prescribes, in Table A of the OMB implementation guidance the multiplier for agencies to use. Adjusting the baseline penalty with the multiplier provides the "Preliminary New Penalty" listed in column seven. The preliminary new penalty is then compared with the current penalty from column three to find the Final Adjusted Penalty in column eight. The adjusted penalty is the lesser of either the preliminary new penalty or an amount equal to 250% of the current penalty. As no preliminary new penalties are greater than 250% of the current penalty, columns seven and eight are identical.

IV. Today's Interim Final Rule

Summary of Penalty Adjustments

As noted in the regulatory text (Part 386, Appendices A and B) in today's rule, the adjusted civil penalties identified in the appendices supersede, where a discrepancy exists, the corresponding civil penalty amounts identified in title 49, United States Code.

Part 386

The introductions to Part 386, Appendices A and B, have been revised to refer to the 2015 Act. Below is the table with the current civil penalty amounts in the appendices of Part 386 and new civil penalties following the inflation adjustments required by the 2015 Act:

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386

Civil penalty location (1)	Legal authority (2)	Current penalty ($) (3)	Baseline penalty ($) (4)	Baseline penalty year (5)	OMB prescribed multiplier (6)	Preliminary new penalty ($) (7)	Final adjusted penalty in 2016 ($) (8)
Appendix A II Subpoena ...	MAP–21 Pub. L. 112–141, sec. 32110, 126 Stat. 405, 782, (2012) (49 U.S.C. 525).	$1,000	$1,000	2012	1.02819	$1,028	$1,028
Appendix A II Subpoena ...	MAP–21 Pub. L. 112–141, sec. 32110, 126 Stat. 405, 782 (2012) (49 U.S.C. 525).	10,000	10,000	2012	1.02819	10,282	10,282
Appendix A IV (a) Out-of-service order (operation of CMV by driver).	Pub. L. 98–554, sec. 213(b), 98 Stat. 2829, 2841–2843 (1984) (49 U.S.C. 521(b)(7)), 55 FR 11224 (March 27, 1990).	3,100	1,000	1990	1.78156	1,782	1,782

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[2] 80 FR 19146, April 3, 2015.

[3] 72 FR 55100, September 28, 2007.

[4] 68 FR 15381, March 31, 2003.

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386—Continued

Civil penalty location (1)	Legal authority (2)	Current penalty ($) (3)	Baseline penalty ($) (4)	Baseline penalty year (5)	OMB prescribed multiplier (6)	Preliminary new penalty ($) (7)	Final adjusted penalty in 2016 ($) (8)
Appendix A IV (b) Out-of-service order (requiring or permitting operation of CMV by driver).	Pub. L. 98–554, sec. 213(a), 98 Stat, 2829 (1984) (49 U.S.C. 521(b)(7)), 55 FR 11224 (March 27, 1990).	21,000	10,000	1990	1.78156	17,816	17,816
Appendix A IV (c) Out-of-service order (operation by driver of CMV or intermodal equipment that was placed out of service).	Pub. L. 98–554, sec. 213(a), 98 Stat 2829 (1984) (49 U.S.C. 521(b)(7)), FR 11224 (March 27, 1990).	3,100	1,000	1990	1.78156	1,782	1,782
Appendix A IV (d) Out-of-service order (requiring or permitting operation of CMV or intermodal equipment that was placed out of service).	Pub. L. 98–554, sec. 213(a), 98 Stat 2829 (1984) (49 U.S.C. 521(b)(7)); 55 FR 11224 (March 27, 1990).	21,000	10,000	1990	1.78156	17,816	17,816
Appendix A IV (e) Out-of-service order (failure to return written certification of correction).	49 U.S.C. 521(b)(2)(B), 49 CFR 396.9(d)(3).	850	500	1990	1.78156	891	891
Appendix A IV (g) Out-of-service order (failure to cease operations as ordered).	MAP–21, Pub. L. 112–141, sec. 32503, 126 Stat. 405, 803 (2012) (49 U.S.C. 521(b)(2)(F)).	25,000	25,000	2012	1.02819	25,705	25,705
Appendix A IV (h) Out-of-service order (operating in violation of order).	Pub. L. 98–554, sec. 213(a), 98 Stat, 2829, 2841–2843 (1984) (49 U.S.C. 521(b)(7)).	16,000	10,000	1984	2.25867	22,587	22,587
Appendix A IV (i) Out-of-service order (conducting operations during suspension or revocation for failure to pay penalties).	TEA–21, Pub. L. 105–178, sec. 4015(b), 112 Stat. 411–12 (1998) (49 U.S.C. 521(b)(2)(A), 521(b)(7)); 65 FR 56521, 56530 (September 19, 2000).	16,000	10,000	1998	1.45023	14,502	14,502
Appendix A IV (j) (conducting operations during suspension or revocation).	Pub. L. 98–554, sec. 213(a), 98 Stat, 2829, 2841–2843 (1984) (49 U.S.C. 521(b)(7)).	11,000	10,000	1984	2.25867	22,587	22,587
Appendix B (a)(1) Recordkeeping—maximum penalty per day.	SAFETEA–LU, Pub. L. 109–59, sec. 4102(a), 119 Stat. 1144, 1715 (2005) (49 U.S.C. 521(b)(2)(B)(i)).	1,100	1,000	2005	1.19397	1,194	1,194
Appendix B (a)(1) Recordkeeping—maximum total penalty.	SAFETEA–LU, Pub. L. 109–59, sec. 4102(a), 119 Stat. 1144, 1715 (2005) (49 U.S.C. 521(b)(2)(B)(i)).	11,000	10,000	2005	1.19397	11,940	11,940
Appendix B (a)(2) Knowing falsification of records.	SAFETEA–LU, Pub. L. 109–59, sec. 4102(a), 119 Stat. 1144, 1715 (2005) (49 U.S.C. 521(b)(2)(B)(ii)).	11,000	10,000	2005	1.19397	11,940	11,940
Appendix B (a)(3) Non-recordkeeping violations.	TEA–21, Pub. L. 105–178, sec. 4015(b), 112 Stat. 107, 411–12 (1998) (49 U.S.C. 521(b)(2)(A)).	16,000	10,000	1998	1.45023	14,502	14,502
Appendix B (a)(4) Non-recordkeeping violations by drivers.	TEA–21, Pub. L. 105–178, sec. 4015(b), 112 Stat. 107, 411–12 (1998) (49 U.S.C. 521(b)(2)(A)).	3,750	2,500	1998	1.45023	3,626	3,626

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386—Continued

Civil penalty location (1)	Legal authority (2)	Current penalty ($) (3)	Baseline penalty ($) (4)	Baseline penalty year (5)	OMB prescribed multiplier (6)	Preliminary new penalty ($) (7)	Final adjusted penalty in 2016 ($) (8)
Appendix B (a)(5) Violation of 49 CFR 392.5 (first offense).	SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, 1715; sec. 4102(b), 119 Stat. 1715–16 (2005) (49 U.S.C. 31310(i)(2)(A)).	4,125	2,500	2005	1.19397	2,985	2,985
Appendix B (a)(5) Violation of 49 CFR 392.5 (second or subsequent conviction).	SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, 1715; sec. 4102(b), 119 Stat. 1715–16 (2005) (49 U.S.C. 31310(i)(2)(A)).	4,125	5,000	2005	1.19397	5,970	5,970
Appendix B (b) Commercial driver's license (CDL) violations.	Pub. L. 99–570, sec. 12012(b), 100 Stat. 3207–184–85 (1986) (49 U.S.C. 521(b)(2)(C)).	4,750	2,500	1986	2.15628	5,391	5,391
Appendix B (b)(1): Special penalties pertaining to violation of out-of-service orders (first conviction).	SAFETEA–LU, Pub. L. 109–59, sec. 4102(b), 119 Stat. 1144, 1715 (2005) (49 U.S.C. 31310(i)(2)(A)).	2,750	2,500	2005	1.19397	2,985	2,985
Appendix B (b)(1) Special penalties pertaining to violation of out-of-service orders (second or subsequent conviction).	SAFETEA–LU, Pub. L. 109–59, 119, sec. 4102(b), Stat. 1144, 1715 (2005) (49 U.S.C. 31310(i)(2)(A)).	5,500	5,000	2005	1.19397	5,970	5,970
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (minimum penalty).	Pub. L. 99–570, sec. 12012(b), 100 Stat. 3207–184–85 (1986) (49 U.S.C. 521(b)(2)(C)).	4,750	2,500	1986	2.15628	5,391	5,391
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (maximum penalty).	SAFETEA–LU, Pub. L. 109–59, sec. 4102(b), 119 Stat. 1144, 1715 (2005) (49 U.S.C. 31310(i)(2)(C)).	27,500	25,000	2005	1.19397	29,849	29,849
Appendix B (b)(3) Special penalties pertaining to railroad-highway grade crossing violations.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 403(a), 109 Stat. 956 (1995) (49 U.S.C. 31310(j)(2)(B)).	11,000	10,000	1995	1.54742	15,474	15,474
Appendix B (d) Financial responsibility violations.	Pub. L. 103–272, sec. 31139(f), 108 Stat. 745, 1006–1008 (1994) (49 U.S.C. 31139(g)(1)).	21,000	10,000	1994	1.59089	15,909	15,909
Appendix B (e)(1) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (transportation or shipment of hazardous materials).	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837–838 (2012) (49 U.S.C. 5123(a)(1)).	75,000	75,000	2012	1.02819	77,114	77,114
Appendix B (e)(2) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—minimum penalty.	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. 5123(a)(3)).	450	450	2012	1.02819	463	463

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386—Continued

Civil penalty location (1)	Legal authority (2)	Current penalty ($) (3)	Baseline penalty ($) (4)	Baseline penalty year (5)	OMB prescribed multiplier (6)	Preliminary new penalty ($) (7)	Final adjusted penalty in 2016 ($) (8)
Appendix B (e)(2): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—maximum penalty.	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. 5123(a)(1)).	75,000	75,000	2012	1.02819	77,114	77,114
Appendix B (e)(3) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (packaging or container).	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837, (2012) (49 U.S.C. 5123(a)(1)).	75,000	75,000	2012	1.02819	77,114	77,114
Appendix B (e)(4): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (compliance with FMCSRs).	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. 5123(a)(1)).	75,000	75,000	2012	1.02819	77,114	77,114
Appendix B (e)(5) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (death, serious illness, severe injury to persons; destruction of property).	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. 5123(a)(2)).	175,000	175,000	2012	1.02819	179,933	179,933
Appendix B (f)(1) Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (generally).	MAP–21, Pub. L. 112–141, sec. 32503, 126 Stat. 405, 803 (2012) (49 U.S.C. 521(b)(2)(F)).	25,000	25,000	2012	1.02819	25,705	25,705
Appendix B (f)(2) Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (hazardous materials)—maximum penalty.	MAP–21, Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (49 U.S.C. 5123(a)(1)).	75,000	75,000	2012	1.02819	77,114	77,114
Appendix B (f)(2): Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (hazardous materials)—maximum penalty if death, serious illness, severe injury to persons; destruction of property.	MAP–21, Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. 5123(a)(2)).	175,000	175,000	2012	1.02819	179,933	179,933
Appendix B (g)(1) New Appendix B (g)(1): Violations of the commercial regulations (CR) (property carriers).	MAP–21, Pub. L. 112–141, sec. 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. 14901(a)).	10,000	10,000	2012	1.02819	10,282	10,282
Appendix B (g)(2) Violations of the CRs (brokers).	MAP–21 Pub. L. 112–141, sec. 32919(a), 126 Stat. 405, 827 (2012) (49 U.S.C. 14916(c)).	10,000	10,000	2012	1.02819	10,282	10,282
Appendix B (g)(3) Violations of the CRs (passenger carriers).	MAP–21, Pub. L. 112–141, sec. 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. 14901(a)).	25,000	25,000	2012	1.02819	25,705	25,705

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386—Continued

Civil penalty location (1)	Legal authority (2)	Current penalty ($) (3)	Baseline penalty ($) (4)	Baseline penalty year (5)	OMB prescribed multiplier (6)	Preliminary new penalty ($) (7)	Final adjusted penalty in 2016 ($) (8)
Appendix B (g)(4) Violations of the CRs (foreign motor carriers, foreign motor private carriers).	MAP–21, Pub. L. 112–141, sec. 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. 14901(a)).	10,000	10,000	2012	1.02819	10,282	10,282
Appendix B (g)(5) Violations of the CRs (foreign motor carriers, foreign motor private carriers before implementation of North American Free Trade Agreement land transportation provisions)—maximum penalty for intentional violation.	MCSIA of 1999, Pub. L. 106–59, sec. 219(b), 113 Stat. 1748, 1768 (1999) (49 U.S.C. 14901 note).	16,000	10,000	1999	1.41402	14,140	14,140
Appendix B (g)(5) Violations of the CRs (foreign motor carriers, foreign motor private carriers before implementation of North American Free Trade Agreement land transportation provisions)—maximum penalty for a pattern of intentional violations.	MCSIA of 1999, Pub. L. 106–59, sec. 219(c), 113 Stat. 1748, 1768 (1999) (49 U.S.C. 14901 note).	37,500	25,000	1999	1.41402	35,351	35,351
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—minimum penalty.	MAP–21, Pub. L. 112–141, sec. 32108, 126 Stat. 405, 782 (2012) (49 U.S.C. 14901(b)).	20,000	20,000	2012	1.02819	20,564	20,564
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—maximum penalty.	MAP–21 Pub. L. 112–141, sec. 32108, 126 Stat. 405,782 (2012) (49 U.S.C. 14901(b)).	40,000	40,000	2012	1.02819	41,128	41,128
Appendix B (g)(7): Violations of the CRs (HHG carrier or freight forwarder, or their receiver or trustee).	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 914 (1995) (49 U.S.C. 14901(d)(1)).	1,100	1,000	1995	1.54742	1,547	1,547
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services)—minimum penalty for first violation.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 914 (1995) (49 U.S.C. 14901(e)).	3,200	2,000	1995	1.54742	3,095	3,095
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services).	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 914 (1995) (49 U.S.C. 14901(e)).	7,500	5,000	1995	1.54742	7,737	7,737
Appendix B (g)(10) Tariff violations.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 868–869, 915 (1995) (49 U.S.C. 13702, 14903).	140,000	100,000	1995	1.54742	154,742	154,742
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—first violation.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 915–916 (1995) (49 U.S.C. 14904(a)).	320	200	1995	1.54742	309	309

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386—Continued

Civil penalty location (1)	Legal authority (2)	Current penalty ($) (3)	Baseline penalty ($) (4)	Baseline penalty year (5)	OMB prescribed multiplier (6)	Preliminary new penalty ($) (7)	Final adjusted penalty in 2016 ($) (8)
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—subsequent violations.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 915–916 (1995) (49 U.S.C. 14904(a)).	375	250	1995	1.54742	387	387
Appendix B (g)(12): Tariff violations (freight forwarders)—maximum penalty for first violation.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (49 U.S.C. 14904(b)(1)).	750	500	1995	1.54742	774	774
Appendix B (g)(12): Tariff violations (freight forwarders)—maximum penalty for subsequent violations.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (1995) (49 U.S.C. 14904(b)(1)).	3,200	2,000	1995	1.54742	3,095	3,095
Appendix B (g)(13): Service from freight forwarder at less than rate in effect—maximum penalty for first violation.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (1995) (49 U.S.C. 14904(b)(2)).	750	500	1995	1.54742	774	774
Appendix B (g)(13): Service from freight forwarder at less than rate in effect—maximum penalty for subsequent violation(s).	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (1995) (49 U.S.C. 14904(b)(2)).	3,200	2,000	1995	1.54742	3,095	3,095
Appendix B (g)(14): Violations related to loading and unloading motor vehicles.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (1995) (49 U.S.C. 14905).	16,000	10,000	1995	1.54742	15,474	15,474
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B (except 13901 and 13902(c))—minimum penalty.	MAP–21, Pub. L. 112–141, sec. 32108, 126 Stat. 405, 782 (2012) (49 U.S.C. 14901).	1,000	1,000	2012	1.02819	1,028	1,028
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B—maximum penalty.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916–917 (1995) (49 U.S.C. 14907).	7,500	5,000	1995	1.54742	7,737	7,737
Appendix B (g)(17): Unauthorized disclosure of information.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 917 (1995) (49 U.S.C. 14908).	3,200	2,000	1995	1.54742	3,095	3,095
Appendix B (g)(18): Violation of 49 U.S.C. subtitle IV, part B, or condition of registration.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 917 (1995) (49 U.S.C. 14910).	750	500	1995	1.54742	774	774
Appendix B (g)(21)(i): Knowingly and willfully fails to deliver or unload HHG at destination.	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (1995) (49 U.S.C. 14905).	11,000	10,000	1995	1.54742	15,474	15,474
Appendix B (g)(22): HHG broker estimate before entering into an agreement with a motor carrier.	SAFETEA–LU, Pub. L. 109–59, sec. 4209(2), 119 Stat. 1144, 1758, (2005) (49 U.S.C. 14901(d)(2)).	10,900	10,000	2005	1.19397	11,940	11,940

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386—Continued

Civil penalty location (1)	Legal authority (2)	Current penalty ($) (3)	Baseline penalty ($) (4)	Baseline penalty year (5)	OMB prescribed multiplier (6)	Preliminary new penalty ($) (7)	Final adjusted penalty in 2016 ($) (8)
Appendix B (g)(23): HHG transportation or broker services—registration requirement.	SAFETEA–LU, Pub. L. 109–59, sec. 4209(d)(3), 119 Stat. 1144, 1758 (2005) (49 U.S.C. 14901(d)(3)).	27,250	25,000	2005	1.19397	29,849	29,849
Appendix B (h): Copying of records and access to equipment, lands, and buildings—maximum penalty per day.	SAFETEA–LU, Pub. L. 109–59, sec. 4103(2), 119 Stat. 1144, 1716 (2005) (49 U.S.C. 521(b)(2)(E)).	1,100	1,000	2005	1.19397	1,194	1,194
Appendix B (h): Copying of records and access to equipment, lands, and buildings—maximum total penalty.	SAFETEA–LU, Pub. L. 109–59, sec. 4103(2), 119 Stat. 1716 (2005) (49 U.S.C. 521(b)(2)(E)).	11,000	10,000	2005	1.19397	11,940	11,940
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), 31502—minimum penalty for first violation.	MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).	2,000	2,000	2012	1.02819	2,056	2,056
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), 31502—maximum penalty for first violation.	MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).	5,000	5,000	2012	1.02819	5,141	5,141
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), 31502—minimum penalty for subsequent violation(s).	MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524). MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).	2,500	2,500	2012	1.02819	2,570	2,570
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), 31502—maximum penalty for subsequent violation(s).	MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).	7,500	7,500	2012	1.02819	7,711	7,711
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for first violation.	MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 14906).	2,000	2,000	2012	1.02819	2,056	2,056
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for subsequent violation(s).	MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 14906).	5,000	5,000	2012	1.02819	5,141	5,141

V. Section-By-Section Analysis

FMCSA updates the civil penalties in Appendices A and B of Part 386 as outlined in Table 1 above and makes minor editorial changes.

VI. Rulemaking Analysis and Notices

A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

This IFR is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Historically, the Agency has never assessed civil penalties that approach $100 million in any given year.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis, because, as discussed earlier in the legal basis section, this action is not subject to prior notice and comment under section 553(b) of the Administrative Procedure Act.

C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this interim final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the interim final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance please consult the FMCSA point of contact, Ms. LaTonya Mimms, listed in the **FOR FURTHER INFORMATION CONTACT** section of this interim final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $155 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2014 levels) or more in any one year. This interim final rule will not result in such an expenditure.

E. Paperwork Reduction Act

This interim final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Federalism (E.O. 13132)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this interim final rule does not have federalism implications.

G. Civil Justice Reform (E.O. 12988)

This interim final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

H. Protection of Children (E.O. 13045)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules to include an evaluation of the regulation's environmental health and safety effects on children if an agency has reason to believe the rule may disproportionately affect children. The Agency determined that this interim final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, this regulatory action could not pose an environmental or safety risk to children.

I. Taking of Private Property (E.O. 12630)

FMCSA reviewed this interim final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

J. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII).

The E-Government Act of 2002, Public Law 107–347, 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

K. Intergovernmental Review (E.O. 12372)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

L. Energy Supply, Distribution, or Use (E.O. 13211)

FMCSA analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

M. Indian Tribal Governments (E.O. 13175)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

N. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

O. Environmental Review (National Environmental Policy Act, Clean Air Act, Environmental Justice)

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts, Order 5610.1 (FMCSA Order), March 1, 2004 (69 FR 9680). FMCSA's Order states that "[w]here FMCSA has no discretion to withhold or condition an action if the action is taken in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order." Id. at chapter 1.D. Because Congress specifies the Agency's precise action here, thus leaving the Agency no discretion over such action, and since the Agency lacks jurisdiction and therefore control and responsibility over the effects of this action, this rulemaking falls under chapter 1.D. Therefore, no further analysis is considered.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898 (Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA has determined that this interim final rule would have no environmental justice effects, nor would its promulgation have any collective environmental impact.

List of Subjects in 49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

For the reasons stated in the preamble, FMCSA is amending 49 CFR part 386 as follows:

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

■ 1. The authority citation for part 386 is revised to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; 49 U.S.C. 5123; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; Sec. 701 of Pub. L. 114–74, 129 Stat. 584, 599; and 49 CFR 1.81 and 1.87.

■ 2. Amend Appendix A to part 386 by revising the introductory text and sections II, IV.a through e., and IV.g. through j. to read as follows:

Appendix A to Part 386—Penalty Schedule: Violations of Notices and Orders

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Public Law 114–74, sec. 701, 129 Stat. 584, 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

* * * * *

II. Subpoena

Violation—Failure to respond to Agency subpoena to appear and testify or produce records.

Penalty—minimum of $1,028 but not more than $10,282 per violation.

* * * * *

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to $1,782 per violation.

(For purposes of this violation, the term "driver" means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to $17,816 per violation.

(This violation applies to motor carriers including an independent contractor who is not a "driver," as defined under paragraph IV(a) above.)

c. Violation—Operation of a commercial motor vehicle or intermodal equipment by a driver after the vehicle or intermodal equipment was placed out-of-service and before the required repairs are made.

Penalty—$1,782 each time the vehicle or intermodal equipment is so operated.

(This violation applies to drivers as defined in IV(a) above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle or intermodal equipment placed out-of-service before the required repairs are made.

Penalty—Up to $17,816 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner operator who is not a "driver," as defined in IV(a) above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to $891 per violation.

* * * * *

g. Violation—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer's commercial motor vehicle operations or to cease part of an intermodal equipment provider's operations, *i.e.,* failure to cease operations as ordered.

Penalty—Up to $25,705 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Operating in violation of an order issued under § 386.73.

Penalty—Up to $22,587 per day the operation continues after the effective date and time of the out-of-service order.

i. Violation—Conducting operations during a period of suspension under § 386.83 or § 386.84 for failure to pay penalties.

Penalty—Up to $14,502 for each day that operations are conducted during the suspension or revocation period.

j. Violation—Conducting operations during a period of suspension or revocation under §§ 385.911, 385.913, 385.1009 or 385.1011.

Penalty—Up to $22,587 for each day that operations are conducted during the suspension or revocation period.

■ 3. Amend Appendix B to part 386 by revising the introductory text and paragraphs (a)(1) through (5), (b), (c), (d), (e), (f), (g) introductory text, (g)(1) through (8), (g)(10) through (18), (g)(21)(i), (g)(22) and (23), (h), and (i) to read as follows:

Appendix B to Part 386—Penalty Schedule: Violations and Monetary Penalties

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Public Law 114–74, sec. 701, 129 Stat. 584, 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

What are the types of violations and maximum monetary penalties?

(a) *Violations of the Federal Motor Carrier Safety Regulations (FMCSRs):*

(1) *Recordkeeping.* A person or entity that fails to prepare or maintain a record required by parts 40, 382, 385, and 390–99 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of $1,194 for each day the violation continues, up to $11,940.

(2) *Knowing falsification of records.* A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, 385, and 390–99 of this subchapter, knowingly makes or causes to be made a false or incomplete record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation order of the Secretary is subject to a maximum civil penalty of $11,940 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.

(3) *Non-recordkeeping violations.* A person or entity that violates parts 382, 385, or 390–99 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed $14,502 for each violation.

(4) *Non-recordkeeping violations by drivers.* A driver who violates parts 382, 385, and 390–99 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed $3,626.

(5) *Violation of 49 CFR 392.5.* A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed $2,985 for a first conviction and not less than $5,970 for a second or subsequent conviction.

* * * * *

(b) *Commercial driver's license (CDL) violations.* Any person who violates 49 CFR part 383, subparts B, C, E, F, G, or H is subject to a civil penalty not to exceed $5,391; except:

(1) A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than $2,985 for a first conviction and not less than $5,970 for a second or subsequent conviction;

(2) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes an employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than $5,391 or more than $29,849; and

(3) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that CDL-holder to operate a CMV in violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings is subject to a civil penalty of not more than $15,474.

(c) *[Reserved]*

(d) *Financial responsibility violations.* A motor carrier that fails to maintain the levels of financial responsibility prescribed by part 387 of this subchapter or any person (except an employee who acts without knowledge) who knowingly violates the rules of part 387 subparts A and B is subject to a maximum penalty of $15,909. Each day of a continuing violation constitutes a separate offense.

(e) *Violations of the Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations found in Subpart E of Part 385.* This paragraph applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than $77,114 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $463 and not more than $77,114 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations or exemptions under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not more than $77,114 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not more than $77,114.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $179,933 for each offense.

(f) *Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating.* (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being placed out of service because of receiving a final "unsatisfactory" safety rating, to a civil penalty of not more than $25,705 (49 CFR 385.13). Each day the transportation continues in violation of a final "unsatisfactory" safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final "unsatisfactory" safety rating, to a civil penalty of not more than $77,114 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $179,933 for each offense. Each day the transportation continues in violation of a final "unsatisfactory" safety rating constitutes a separate offense.

(g) *Violations of the commercial regulations (CRs).* Penalties for violations of the CRs are specified in 49 U.S.C. chapter 149. These penalties relate to transportation subject to the Secretary's jurisdiction under 49 U.S.C. chapter 135. Unless otherwise noted, a separate violation occurs for each day the violation continues.

(1) A person who operates as a motor carrier for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of $10,282 per violation.

(2) A person who knowingly operates as a broker in violation of registration requirements of 49 U.S.C. 13904 or financial security requirements of 49 U.S.C. 13906 is liable for a penalty not to exceed $10,282 for each violation.

(3) A person who operates as a motor carrier of passengers in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of $25,705 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier of property in violation of the provisions of 49 U.S.C. 13902(c) is liable for a minimum penalty of $10,282 per violation.

(5) A person who operates as a foreign motor carrier or foreign motor private carrier without authority, before the implementation of the land transportation provisions of the North American Free Trade Agreement, outside the boundaries of a commercial zone along the United States-Mexico border, is liable for a maximum penalty of $14,140 for an intentional violation and a maximum penalty of $35,351 for a pattern of intentional violations.

(6) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions of 49 U.S.C. 13901 is

liable for a minimum penalty of $20,564 and a maximum penalty of $41,128 per violation.

(7) A motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers, is liable for a minimum penalty of $1,547 per violation.

(8) A person—

(i) Who falsifies, or authorizes an agent or other person to falsify, documents used in the transportation of household goods by motor carrier or freight forwarder to evidence the weight of a shipment or

(ii) Who charges for services which are not performed or are not reasonably necessary in the safe and adequate movement of the shipment is liable for a minimum penalty of $3,095 for the first violation and $7,737 for each subsequent violation.

* * * * *

(10) A person who offers, gives, solicits, or receives transportation of property by a carrier at a different rate than the rate in effect under 49 U.S.C. 13702 is liable for a maximum penalty of $154,742 per violation. When acting in the scope of his/her employment, the acts or omissions of a person acting for or employed by a carrier or shipper are considered to be the acts or omissions of that carrier or shipper, as well as that person.

(11) Any person who offers, gives, solicits, or receives a rebate or concession related to motor carrier transportation subject to jurisdiction under subchapter I of 49 U.S.C. chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702, commits a violation for which the penalty is $309 for the first violation and $387 for each subsequent violation.

(12) A freight forwarder, its officer, agent, or employee, that assists or willingly permits a person to get service under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to $774 for the first violation and up to $3,095 for each subsequent violation.

(13) A person who gets or attempts to get service from a freight forwarder under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to $774 for the first violation and up to $3,095 for each subsequent violation.

(14) A person who knowingly authorizes, consents to, or permits a violation of 49 U.S.C. 14103 relating to loading and unloading motor vehicles or who knowingly violates subsection (a) of 49 U.S.C. 14103 is liable for a penalty of not more than $15,474 per violation.

(15) [Reserved]

(16) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under part B of subtitle IV, title 49, U.S.C., or an officer, agent, or employee of that person, is liable for a minimum penalty of $1,028 and for a maximum penalty of $7,737 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business-related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(17) A motor carrier, water carrier, freight forwarder, or broker, or their officer, receiver, trustee, lessee, employee, or other person authorized to receive information from them, who discloses information identified in 49 U.S.C. 14908 without the permission of the shipper or consignee is liable for a maximum penalty of $3,095.

(18) A person who violates a provision of part B, subtitle IV, title 49, U.S.C., or a regulation or order under Part B, or who violates a condition of registration related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135, or who violates a condition of registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable for a penalty of $774 for each violation if another penalty is not provided in 49 U.S.C. chapter 149.

* * * * *

(21) * * *

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G of this chapter, is liable for a civil penalty of not less than $15,474 for each violation. Each day of a continuing violation constitutes a separate offense.

* * * * *

(22) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than $11,940 for each violation.

(23) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than $29,849 for each violation.

(h) *Copying of records and access to equipment, lands, and buildings.* A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand in person or in writing, the Federal Motor Carrier Safety Administration, an employee designated by the Federal Motor Carrier Safety Administration, or an employee of a MCSAP grant recipient to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than $1,194 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $11,940.

(i) *Evasion.* A person, or an officer, employee, or agent of that person:

(1) Who by any means tries to evade regulation of motor carriers under title 49, United States Code, chapter 5, chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or sections 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502, or a regulation issued under any of those provisions, shall be fined at least $2,056 but not more than $5,141 for the first violation and at least $2,570 but not more than $7,711 for a subsequent violation.

(2) Who tries to evade regulation under part B of subtitle IV, title 49, U.S.C., for carriers or brokers is liable for a penalty of at least $2,056 for the first violation or at least $5,141 for a subsequent violation.

Issued under the authority of delegation in 49 CFR 1.87 on: June 17, 2016.

T.F. Scott Darling III,

Acting Administrator.

[FR Doc. 2016–14973 Filed 6–24–16; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 81, No. 123
Monday, June 27, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE–2014–BT–TP–0054]

RIN 1904–AD43

Energy Conservation Program: Test Procedures for Compressors

Correction

In proposed rule document 2016–10170 beginning on page 27220 in the issue of Thursday, May 5, 2016, make the following correction:

Appendix A to Subpart T of Part 431—Uniform Test Method for Certain Air Compressors

In Appendix A to Subpart T of Part 431, on page 27258, in the first column, above the thirteenth line from the bottom, insert the following equation:

$$P_{real,100\%} = K_5 \cdot P_{PR,100\%}$$

[FR Doc. C1–2016–10170 Filed 6–24–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5595; Directorate Identifier 2015–NM–087–AD]

RIN 2120–AA64

Airworthiness Directives; Zodiac Seats California LLC Seating Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document announces the reopening of the comment period for the above-referenced NPRM, which proposed the adoption of a new airworthiness directive (AD) that would apply to certain Zodiac Seats California LLC seating systems. The NPRM proposed to require removing affected seating systems. This reopening of the comment period is necessary to ensure that all interested persons have ample opportunity to submit any written relevant data, views, or arguments regarding the proposed requirements of the NPRM.

DATES: We must receive comments on the NPRM by July 7, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5595; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Patrick Farina, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5344; fax: 562–627–5210; email: *Patrick.Farina@faa.gov.*

SUPPLEMENTARY INFORMATION: We proposed to amend 14 CFR part 39 by adding a notice of proposed rulemaking (NPRM) that would apply to certain Zodiac Seats California LLC seating systems. The NPRM was published in the **Federal Register** on April 20, 2016 (81 FR 23212) ("the NPRM"). The NPRM proposed to require removing affected seating systems. The NPRM also invited comments on its overall regulatory, economic, environmental, and energy aspects.

Events Leading to the Reopening of the Comment Period

Since we issued the NPRM, we have received a request from Zodiac Seats California LLC to extend the comment period. Zodiac stated that initial review of the NPRM by the Society of Automotive Engineers (SAE) Aircraft Seat Committee revealed that since the subject matter of the NPRM is highly significant to the industry, more time is necessary to coordinate the industry input to formalize comments. Zodiac added that the comment due date of June 6, 2016, did not provide adequate time to properly research the topics and submit practical comments.

We agree with the commenter's request. We have determined that it is appropriate to reopen the comment period for the NPRM to give all interested persons additional time to examine the proposed requirements and submit comments.

The original comment period for the NPRM, Docket No. FAA–2016–5595, Directorate Identifier 2015–NM–087–AD, closed on June 6, 2016.

FAA's Determination

We consider it necessary to reopen the comment period to give all interested persons additional time to examine the proposed requirements of the NPRM and submit comments. We have determined that reopening the comment period until July 7, 2016, will not compromise the safety of these airplanes.

Extension of Comment Period

The comment period for Docket No. FAA–2016–5595, Directorate Identifier 2015–NM–087–AD, has been revised. The comment period now closes July 7, 2016.

No other part of the regulatory information has been changed; therefore, the NPRM is not republished in the **Federal Register**.

Issued in Renton, Washington, on June 21, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15209 Filed 6–24–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2015–0246]

RIN 2105–AE12

Nondiscrimination on the Basis of Disability in Air Travel: Third Meeting of the Negotiated Rulemaking Committee

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of third public meeting of advisory committee.

SUMMARY: This notice announces the third meeting of the Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee).

DATES: The third meeting of the ACCESS Advisory Committee will be held on July 11 and 12, 2016, from 9 a.m. to 5 p.m., Eastern Daylight Time. Members of the public may submit written comments on the topics to be considered during the meeting by July 5, 2016. See Supplementary Information for details.

ADDRESSES: The meeting will be held at the Ritz Carlton, Pentagon City, 1250 Hayes Street, Arlington, VA 22202, in the Diplomat Room. Attendance is open to the public up to the room's capacity of 150 attendees. Since space is limited, any member of the general public who plans to attend this meeting must notify the registration contact identified below no later than July 5, 2016.

FOR FURTHER INFORMATION CONTACT: To register to attend the meeting, please contact Kyle Illgenfritz (*kilgenfritz@linkvisum.com;* 703–442–4575 extension 128). For other information, please contact Livaughn Chapman or Vinh Nguyen, Office of the Aviation Enforcement and Proceedings, U.S. Department of Transportation, by email at *livaughn.chapman@dot.gov* or *vinh.nguyen@dot.gov* or by telephone at 202–366–9342.

SUPPLEMENTARY INFORMATION:

I. Third Public Meeting of the ACCESS Committee

The third meeting of the ACCESS Advisory Committee will be held on July 11 and 12, 2016, from 9 a.m. to 5 p.m., Eastern Daylight Time. The meeting will be held at the Ritz Carlton, Pentagon City, 1250 Hayes Street, Arlington, VA 22202, in the Diplomat Room. At the meeting, the ACCESS Advisory Committee will continue to address whether to require accessible inflight entertainment (IFE) and strengthen accessibility requirements for other in-flight communications, whether to require an accessible lavatory on new single-aisle aircraft over a certain size, and whether to amend the definition of "service animals" that may accompany passengers with a disability on a flight. This meeting will include reports from the three working groups on the status of their discussions of the issues identified in previous meetings and any strawman proposals that are being developed. Prior to the meeting, the agenda will be available on the ACCESS Advisory Committee's Web site, *www.transportation.gov/access-advisory-committee.*

The meeting will be open to the public. Attendance will be limited by the size of the meeting room (maximum 150 attendees). Because space is limited, we ask that any member of the public who plans to attend the meeting notify the registration contact, Kyle Illgenfritz (*kilgenfritz@linkvisum.com;* 703–442–4575 extension 128) at Linkvisum, no later than July 5, 2016. At the discretion of the facilitator and the Committee and time permitting, members of the public are invited to contribute to the discussion and provide oral comments.

II. Submitting Written Comments

Members of the public may submit written comments on the topics to be considered during the meeting by July 5, 2016, to FDMC, Docket Number DOT–OST–2015–0246. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. DOT recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that DOT can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, DOT–OST–2015–0246, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

III. Viewing Comments and Documents

To view comments and any documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov.* Enter the docket number, DOT–OST–2015–0246, in the keyword box, and click "Search." Next, click the link to "Open Docket Folder" and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

IV. ACCESS Advisory Committee Charter

The ACCESS Advisory Committee is established by charter in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. Secretary of Transportation Anthony Foxx approved the ACCESS Advisory Committee charter on April 6, 2016. The committee's charter sets forth policies for the operation of the advisory committee and is available on the Department's Web site at *www.transportation.gov/office-general-counsel/negotiated-regulations/charter.*

V. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

VI. Future Committee Meetings

DOT anticipates that the ACCESS Advisory Committee will have three additional two-day meetings in Washington DC The meetings are tentatively scheduled for following dates: Fourth meeting, August 16–17; fifth meeting, September 22–23, and the sixth and final meeting, October 13–14. Notices of all future meetings will be published in the **Federal Register** at least 15 calendar days prior to each meeting.

Notice of this meeting is being provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations covering management of Federal advisory committees. *See* 41 CFR part 102–3.

Issued under the authority of delegation in 49 CFR 1.27(n).

Dated: June 22, 2016.

Molly J. Moran,

Acting General Counsel.

[FR Doc. 2016–15147 Filed 6–24–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Institutes of Standards and Technology

15 CFR Part 17

[Docket No.: 160311228–6228–01]

RIN 0693–AB62

Technology Innovation—Personnel Exchanges

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: NIST is seeking comments on proposed regulations intended to foster the exchange of scientific and technical personnel among academia, industry, including particularly small businesses, and Federal laboratories. Such exchanges are an effective means for accelerating the transfer of Federal laboratory technology to benefit the United States economy. An objective of this rulemaking is to clarify the appropriate use of Cooperative Research and Development Agreement authority by a Federal laboratory for personnel exchanges where the Federal laboratory has an existing relationship with the potential partner through another legal mechanism, as well as in the context of joint research projects or the development of existing laboratory technology, and through use of the General Services Administration's Presidential Innovation Fellows program for Federal laboratory Entrepreneur-in-Residence programs. Another objective of this rulemaking is to remove outdated regulations addressing the licensing of inventions owned by the Department of Commerce. When the comment period is concluded, NIST will analyze the comments received, incorporate comments as appropriate, and publish a final regulation.

DATES: Comments must be received no later than July 27, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number: 160311228–6228–01, through the *Federal e-Rulemaking Portal: http://www.regulations.gov* (search using the docket number). Follow the online instructions for submitting comments. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

FOR FURTHER INFORMATION CONTACT: Courtney Silverthorn, via email: *courtney.silverthorn@nist.gov,* or by telephone: 301–975–4189.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this action apply to me?

This proposed rule may be of interest to you if you are an educational institution, a company (including a small business firm), or a nonprofit institution, that collaborates or would like to collaborate with Federal Government employees on technology research and development of mutual interest.

II. Background

The Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96–480, as amended (codified at title 15 of the United States Code (U.S.C.), Section 3701 *et seq.*) (the Stevenson-Wydler Act), sets forth a national policy to promote cooperation among academia, Federal laboratories, labor, and industry in order to facilitate the transfer of innovative federal technologies to United States and world markets. In furtherance of that policy, the Administration's *Lab to Market* initiative seeks to "significantly accelerate and improve technology transfer by streamlining administrative processes, facilitating partnerships with industry, evaluating impact, and opening federal research and development (R&D) assets as a platform for innovation and economic growth." (*Lab to Market: Cross Agency Priority Goal Quarterly Progress Update, Fiscal Year 2015 Quarter 4).* One proven method to ensure that federal innovations are made available to industry and the public is to encourage frequent interactions among Federal laboratories, academic institutions, and industry, including small businesses.

A. Notice of Proposed Rulemaking

Pursuant to authority delegated to it by the Secretary of Commerce, NIST is providing notice to the public of proposed rulemaking to remove outdated provisions in part 17 of title 15 of the Code of Federal Regulations (CFR) regarding the licensing of inventions owned by the Department, and to revise part 17 to address the use of personnel exchange authorities and programs as authorized under 15 U.S.C. 3712, which authorizes the establishment of a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

Under the Stevenson-Wydler Act, several mechanisms have been developed which are being used by various Federal agencies for exchanging personnel with the public and private sectors. The proposed rules will facilitate agencies' use of existing mechanisms, as well as provide for more integrated programs intended to expand the exchange of personnel as authorized under section 3712, in order to accelerate the transfer of innovative technologies from Federal laboratories for the benefit of the United States and its economy. Some current authorities relevant to personnel exchange between Federal laboratories and non-federal partners are described below.

B. Current Personnel Exchange Mechanisms

1. *Cooperative Research and Development Agreement*—The Cooperative Research and Development Agreement (CRADA) is one of the principal mechanisms used by Federal laboratories to engage in collaborative efforts with non-federal partners to achieve the goals of technology transfer. It affords discretion to Government Owned Government Operated (GOGO) and Government Owned Contractor Operated (GOCO) laboratories to enter into collaborative agreements with many types of organizations. CRADAs allow one or more Federal laboratories and one or more non-federal parties (*i.e.,* state or local government units; industrial organizations; public and private foundations; universities and other non-profit organizations; and other individuals who are licensees of Government-owned inventions) to collaborate to conduct specified research and development-related activities that are consistent with the laboratory's mission. Technical assistance can also be provided to small businesses. The legal authority for this personnel exchange mechanism via mutual collaboration on research and development projects is 15 U.S.C. 3710a. DOE has recently used the CRADA authority to enable a pilot program for public-private entrepreneurial partnerships between Federal laboratories and the private sector for the placement of personnel. The DOE's Lawrence Berkeley National Laboratory provides a virtual home for entrepreneurial clean-energy researchers through "Cyclotron Road," a new public-private partnership to advance energy technologies until they can succeed beyond the laboratory. This new, competitive opportunity provides

clean energy researchers with business mentorship and access to resources and potential business partners to advance innovation.

2. *Entrepreneur Leave Program (ELP)*—Some Department of Energy (DOE) GOCO laboratories have a personnel pathway that permits a limited number of contractor employees to take entrepreneurial leave, also known as Entrepreneurial Separation to Transfer Technology, for a designated period of time. Some laboratories offer the employee assurance of appropriate resources upon return to restart a research program, while others offer continued benefits while the employee is on leave. These programs are designed to facilitate commercialization of technologies developed in a DOE laboratory. Because these laboratories are GOCO facilities, the programs are subject to the policies and procedures of the contractor organization.

3. *Entrepreneur-in-Residence (EIR)*—EIRs are entrepreneurs from outside of Government who want to use their skills to benefit the public good. They are typically mid- to senior-level professionals and may be academics, technology entrepreneurs, software designers, policymakers, business experts, or non-profit leaders who have demonstrated a significant record of innovative achievement in their field. Funding models differ from agency to agency, and some flexibility in authorities can be applied in creating these programs. Generally, these programs run through state or non-profit organizations that recommend or otherwise place the personnel within the technology transfer office. NIST operates its EIR program under the Partnership Intermediary Agreement (PIA) authority, 15 U.S.C. 3715. The program is conducted through a PIA with the Maryland Technology Development Corporation, which selects and funds each EIR. The National Institutes of Health (NIH) program is currently conducted through a contracting mechanism to place EIRs at several of NIH institutes and centers. Both programs rely on the expertise of existing State-based programs with a shared vision of commercializing federal technologies and providing expert support to potentially interested parties working at these Federal laboratories. Similarly, the Department of Homeland Security (DHS) operates a Loaned Executive Program that is open to all interested executive-level talent; DHS makes unpaid temporary appointments under 5 U.S.C. 3109 to place private sector consultants at various DHS laboratories.

4. *Strategic Partnership Projects (SPP)*—This DOE authorization enables a DOE GOCO laboratory to advise United States companies or other agencies and institutions on problems as to which the laboratory has special expertise or equipment. Work is performed under a formal agreement on a full cost recovery basis if the assistance requires more than an incidental amount of time. Authorization: 48 CFR 970.5217–1—Work for Others Program. In addition, the Oak Ridge Institute for Science and Education (ORISE), a DOE institution operated under contract on behalf of DOE, implements a range of education, training, and workforce development programs on behalf of DOE and a number of other Federal sponsors. Programs provide opportunities for participants at a broad range of locations including Federal research laboratories (including GOCO), agency headquarters offices, or universities. For example, an SPP agreement between the United States Department of Agriculture (USDA) and ORISE authorizes ORISE to provide qualified candidates for research positions and to manage the appointment process. ORISE-identified candidates may be selected from a variety of sources and placed into a variety of research-related positions. Appointed candidates placed by ORISE have "program participant" status and are not Federal employees.

5. *Use of Facilities*—Outside entities such as universities, technology incubators, private companies, and individual inventors may be able to use scientific equipment, specialized rooms, testing centers, or other unique experimental property or facilities of the Federal laboratories, such as DOE's designated scientific user facilities located across the DOE laboratories. Such facility use is often at the discretion of the Federal laboratory. While this provides the opportunity for outside entities to place personnel at Government facilities, it does not typically provide a mechanism for those personnel to collaborate with Government personnel (Federal employees). DOE's scientific user facilities are open access, through a proposal solicitation process, and do enable collaboration with scientists and engineers that are employees of the laboratory contractor.

6. *Visiting Scientist Programs*—These are arrangements allowing industry personnel to work for limited periods of time, usually 6–12 months, in a GOCO laboratory. Depending on the program, costs can be borne by the GOCO laboratory or by the organization sending the personnel, and intellectual property arrangements can be addressed in exchange agreements. Because these laboratories are GOCO facilities, they are subject to the policies and procedures of the contractor organization. DOE's national laboratories operated as GOCOs and NIH (*e.g.*, Frederick National Laboratory for Cancer Research) currently offer visiting scientist opportunities.

7. *Educational Partnership Agreements (EPAs)*—These agreements are entered into between the Department of Defense (Defense) and educational institutions, including colleges, universities, and local education agencies, to encourage and enhance the study of scientific disciplines. Under an EPA, a Defense laboratory director may make laboratory personnel available to teach science courses or to assist in the development of science courses and materials for the institution; provide for sabbatical opportunities for faculty and internship opportunities for students of the institution; involve faculty and students of the institution in Defense laboratory projects, cooperate with the institution in developing a program under which students may be given academic credit for work on Defense laboratory projects; provide academic and career advice to students of the institution; loan Defense laboratory equipment to the institution for any purpose and duration in support of such agreement; and transfer commonly used surplus computer or other scientific equipment to the institution. EPAs are authorized by 10 U.S.C. 2194.

8. *Co-Locations*—The USDA has a number of laboratories that are co-located on University campuses, which fosters a high level of scientific exchange between the USDA scientists and their university collaborators.

C. Proposed Regulation Implementing 15 U.S.C. 3712 Personnel Exchanges

The regulation proposed by NIST to implement 15 U.S.C. 3712, in consultation jointly with the Department of Energy and the National Science Foundation, is intended to accomplish two main objectives. The first objective is to clarify the appropriate use of CRADA authority under 15 U.S.C. 3710a for personnel exchanges where a Federal laboratory has an existing relationship with the potential partner through another legal mechanism, such as a grant or cooperative agreement. The second objective is to increase the use of existing authorities to implement personnel exchange programs at Federal Laboratories: (1) By utilizing the existing CRADA authority to transfer personnel to and from a Federal laboratory for joint research projects or the development of existing laboratory technology; and (2) by utilizing the General Services Administration (GSA)'s Presidential Innovation Fellows program to offer Federal laboratories additional options for implementing Entrepreneur-in-Residence programs.

Under the proposed rule, all existing provisions in part 17 of title 15 of the Code of Federal Regulations (CFR), "Licensing of Government-Owned Inventions in the Custody of the Department of Commerce," which are outdated, would be deleted. Outdated subpart A implemented for the Department of Commerce licensing rules found at 41 CFR part 101–4, which were themselves removed at 50 FR 28402, July 12, 1985. Outdated subpart B was reserved. Outdated subpart C set forth appeal procedures addressed to the outdated licensing rules of subpart A. All subparts are obsolete, and the rules governing the licensing of government-owned inventions are today found in 37 CFR part 404. The heading of part 17 would be revised to read "Personnel Exchanges Between Federal Laboratories and Non-Federal Entities," and five new sections would be added.

Section 17.1, Scope, sets forth the scope of revised part 17, which is to implement 15 U.S.C. 3712 and to clarify the appropriate use of personnel exchanges in relation to Federal laboratory CRADAs under the authority of 15 U.S.C. 3710a(a)(1), including CRADAs involving as parties recipients of Federal funding under grants and contracts, which could include National Network for Manufacturing Innovation awardees.

Section 17.2, Definitions, provides definitions for certain terms used in this part.

Section 17.3, Exchange of Federal Laboratory Personnel with Recipients of Federal Funding, provides in paragraph (a) that the existence of a funding agreement (as defined in 35 U.S.C. 201(b)) between a Federal laboratory and a contractor shall not preclude a CRADA with that contractor, where the Federal laboratory director makes a determination that the technical subject matter of the funding agreement is sufficiently distinct from that of the CRADA. Paragraph (a) also provides that a contractor which is a collaborating party shall in no event reimburse a Federal agency under a CRADA using funds awarded to the contractor by that agency.

Paragraph (b) of section 17.3 provides that a Federal laboratory may exchange personnel with a contractor under a CRADA where the determination required under paragraph (a) cannot be made, provided that the CRADA includes at least one collaborating party in addition to the Federal laboratory and that contractor. In that circumstance, the Federal laboratory shall not provide services, property, or other resources to that contractor under the CRADA, and if any individual terms of that contractor's funding agreement conflict with the terms of the multi-party CRADA, then the funding agreement terms will control as applied to that contractor and the Federal laboratory only.

Paragraph (c) of section 17.3 sets forth a number of factors which may be taken into account in making the "sufficiently distinct" determination required under paragraph (a), including whether the conduct of specified research or development efforts under the CRADA would require the contractor to perform tasks identical to those required under the funding agreement; whether existing intellectual property to be provided by the Federal laboratory or the contractor under the CRADA is the same as that provided under, or referenced in, the funding agreement; whether the contractor's employees performing the specified research or development efforts under the CRADA are the same employees performing the tasks required under the funding agreement; and whether services, property or other resources contemplated by the Federal Laboratory to be provided to the contractor for the specified research or development efforts under the CRADA would materially benefit the contractor in the performance of tasks required under the funding agreement.

Section 17.4, Personnel Exchanges from a Federal Agency, provides in paragraph (a)(1) that a Federal laboratory may exchange its personnel with a collaborating party under a CRADA where no invention currently exists. Under paragraph (a)(2), a Federal laboratory may exchange personnel with a non-Federal collaborating party for the purposes of developing or commercializing an invention in which the Federal government has an ownership interest, including an invention made by an employee or former employee while in the employment or service of the Federal government, and such personnel exchanged may include such employee or former employee who is an inventor. Paragraph (a)(2) also provides that funding may be provided by the non-federal collaborating party to the Federal laboratory for the participation of the Federal employee in developing or commercializing an invention, including costs for salary and other expenses, such as benefits and travel. Consistent with guidance in the Office of Legal Counsel's Memorandum for Gary Davis, Acting Director, Office of Government Ethics, September 7, 2000, "Application of 18 U.S.C. 209 to Employee-Inventors Who Receive Outside Royalty Payments," paragraph (a)(2) also sets forth that royalties from inventions received through a license agreement negotiated with the Federal laboratory and paid by the laboratory to an inventor who is a Federal employee are considered Federal compensation. Paragraph (a)(3) provides that where an employee leaves Federal service in order to receive salary or other compensation from a non-Federal organization, a Federal laboratory may use reinstatement authority in accordance with 5 CFR 315.401, or other applicable authorities, to rehire the former Federal employee at the conclusion of the exchange.

In exchanging personnel with a collaborating party under a CRADA, as in any other exercise of the CRADA authority, a Federal Agency should take into account the provisions of 15 U.S.C. 3710a(c)(3) regarding standards of conduct for its employees for resolving potential conflicts of interest.

Section 17.5, Personnel Exchanges to a Federal Agency, provides that a Federal Agency may provide funds for non-federal personnel exchanged in order to bring into a Federal laboratory outside personnel with expertise in scientific commercialization through the Presidential Innovation Fellows program, and that an Agency will engage with the General Services Administration (GSA) to transfer funding for exchanged personnel and to select and place Entrepreneurs-In-Residence at the laboratory for the purposes of evaluating the laboratory's technologies, and providing technical consulting to facilitate readying a technology for commercialization by an outside entity.

III. Request for Comments

NIST requests comments on this proposed rule to encourage the exchange of personnel among Federal laboratories, State, local, and tribal governments, academia and industry, including small businesses. NIST is requesting ideas and comments about ways in which an integrated program might be developed. We have included some questions that you might consider as you develop your comments.

1. Personnel exchanges commonly occur in the course of CRADAs involving Federal laboratories and collaborating parties. Are there ways to further promote personnel exchanges

involving CRADAs? Are there ways to use the CRADA authority to develop a more integrated personnel exchange program? Are there other mechanisms that you find effective and/or easier to use that should be included in this regulation?

2. Do the proposed regulations facilitate the exchange of personnel between Federal laboratories and academia and industry? Are there additional mechanisms that should be incorporated in this regulation?

When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Please organize your comments by referencing the specific question you are responding to or the relevant section number in the proposed regulatory text.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. Provide specific examples to illustrate your concerns and suggest alternatives.

vi. Explain your views as clearly as possible.

vii. Comments that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

viii. Make sure to submit your comments by the comment period deadline identified.

IV. References

1. Federal Laboratory Consortium for Technology Transfer. (n.d.) *Technology Transfer Mechanisms*. Retrieved from *http://www.federallabs.org/education/t2-mechanisms/*.
2. Federal Laboratory Consortium for Technology Transfer. (2011). *Technology Transfer Desk Reference*. Retrieved from: *http://globals.federallabs.org/pdf/T2_Desk_Reference.pdf*.
3. Kalil, T. and Wong, J. (2015). *Lab to Market: Cross Agency Priority Goal Quarterly Progress Update, Fiscal Year 2015 Quarter 4*. Retrieved from: *https://www.performance.gov/node/3395/view?view=public#progress-update*.
4. Howieson, S.V. et al (2013). *Federal Personnel Exchange Mechanisms*. Retrieved from *https://www.ida.org/~/media/Corporate/Files/Publications/STPIPubs/D-4906.ashx*.

V. Statutory and Executive Order Reviews

Executive Order 12866

This rulemaking is a significant regulatory action under Sections 3(f)(3) and 3(f)(4) of Executive Order 12866, as it raises novel policy issues. This rulemaking, however, is not an "economically significant" regulatory action under Section 3(f)(1) of the Executive Order, as it does not have an effect on the economy of $100 million or more in any one year, and it does not have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as defined in Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires the preparation and availability for public comment of "an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble and in the **SUMMARY** section of the preamble. The statutory basis for this proposed rule is provided by 15 U.S.C. 3712. This proposed rule, if implemented, is not expected to directly affect any small entities. Federal agencies that would be directly affected by this rulemaking are not small governmental jurisdictions, small organizations, or small businesses, as defined by the RFA. 5 U.S.C. 601. Any requirements imposed by the proposed rule would be obligatory only upon Federal agencies. NIST does not expect the issuance of the proposed rule to result in any direct impacts to small entities pursuant to the RFA. Small entities could potentially benefit from exchanging personnel with Federal agencies.

The information provided above supports a determination that this rule would not have a significant economic impact on a substantial number of small entities. Because this rulemaking, if adopted, would directly affect Federal agencies and not small entities, NIST concludes the action would not result in a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

This proposed rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This proposed rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 17

Federal employees, Inventions and patents, Laboratories, Research and development, Science and technology, Technology transfer.

For the reasons stated in the preamble, the National Institute of Standards and Technology proposes to revise 15 CFR part 17 as follows:

PART 17—PERSONNEL EXCHANGES BETWEEN FEDERAL LABORATORIES AND NON-FEDERAL ENTITIES

Sec.
17.1 Scope.
17.2 Definitions.
17.3 Exchange of Federal laboratory personnel with recipients of Federal funding.
17.4 Personnel exchanges from a Federal agency.
17.5 Personnel exchanges to a Federal agency.

Authority: 15 U.S.C. 3712.

§ 17.1 Scope.

(a) The Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96–480, as amended (codified at title 15 of the United States Code (U.S.C.), section 3701 *et seq.*)(the Stevenson-Wydler Act), sets forth a national policy to renew, expand, and strengthen cooperation among academia, Federal laboratories, labor, and industry, in forms including personnel exchanges (15 U.S.C. 3701(3)). One proven method to ensure that federal innovations are passed to industry and the public is to encourage frequent interactions among Federal laboratories, academic institutions, and industry, including both large and small businesses. In accordance with applicable ethics regulations and Agency policies, exchanges of personnel between Federal laboratories and outside collaborators should be encouraged (15 U.S.C. 3702(5)). Models that include federal funding, as well as those that are executed without federal funding, are encouraged.

(b) This part implements 15 U.S.C. 3712 and provides clarification regarding the appropriate use of personnel exchanges in relation to Federal laboratory Cooperative Research and Development Agreements (CRADAs) under the authority of 15 U.S.C. 3710a.

(c) This part is applicable to exchanges of personnel between Federal laboratories and parties to a CRADA under 15 U.S.C. 3710a(a)(1).

§ 17.2 Definitions.

(a) The term *funding agreement* shall have the meaning according to it under 35 U.S.C. 201(b).

(b) The term *contractor* shall have the meaning according to it under 35 U.S.C. 201(c).

(c) The term *Federal laboratory* shall have the meaning according to it under 15 U.S.C. 3703(4).

§ 17.3 Exchange of Federal laboratory personnel with recipients of Federal funding.

(a) In accordance with 15 U.S.C. 3710a(b)(3)(A) and 3710a(d)(1), a Federal laboratory may provide personnel, services, property, and other resources to a collaborating party, with or without reimbursement (but not funds to non-Federal parties) for the conduct of specified research or development efforts under a CRADA which are consistent with the missions of the Federal laboratory. The existence of a funding agreement between a Federal laboratory and a contractor shall not preclude the Federal laboratory from using its authority under 15 U.S.C. 3710a to enter into a CRADA with the contractor as a collaborating party for the conduct of specified research or development efforts, where the director of the Federal laboratory determines that the technical subject matter of the funding agreement is sufficiently distinct from that of the CRADA. In no event shall a contractor which is a collaborating party reimburse a Federal agency under a CRADA using funds awarded to the contractor by that agency.

(b)(1) A Federal laboratory may enter into a CRADA with a contractor as a collaborating party for the purpose of exchange of personnel for the conduct of specified research or development efforts where the determination required under paragraph (a) of this section could not be made, provided that:

(i) The CRADA includes at least one collaborating party in addition to the Federal laboratory and that contractor; and

(ii) The Federal laboratory shall not provide services, property or other resources to that contractor under the CRADA.

(2) Where a Federal laboratory enters into a CRADA with a contractor under this paragraph (b), the terms of that contractor's funding agreement shall normally supersede the terms of the CRADA, to the extent that any individual terms conflict, as applied to that contractor and the Federal laboratory only.

(c) In making the determination required under paragraph (a) of this section, the director of a Federal laboratory may consider factors including the following:

(1) Whether the conduct of specified research or development efforts under the CRADA would require the contractor to perform tasks identical to those required under the funding agreement;

(2) Whether existing intellectual property to be provided by the Federal laboratory or the contractor under the CRADA is the same as that provided under, or referenced in, the funding agreement;

(3) Whether the contractor's employees performing the specified research or development efforts under the CRADA are the same employees performing the tasks required under the funding agreement; and

(4) Whether services, property or other resources contemplated by the Federal laboratory to be provided to the contractor for the specified research or development efforts under the CRADA would materially benefit the contractor in the performance of tasks required under the funding agreement.

§ 17.4 Personnel exchanges from a Federal laboratory.

(a) For personnel exchanges in which a Federal laboratory maintains funding for Federal personnel provided to a collaborating party—

(1) in accordance with 15 U.S.C. 3710a(b)(3)(A), a Federal laboratory may exchange personnel with a collaborating party for the purposes of specified scientific or technical research towards a mutual goal consistent with the mission of the Agency, where no invention currently exists, or

(2) in accordance with 15 U.S.C. 3710a(b)(3)(C), a Federal laboratory may exchange personnel with a non-Federal collaborating party for the purposes of developing or commercializing an invention in which the Federal government has an ownership interest, including an invention made by an employee or former employee while in the employment or service of the Federal government, and such personnel exchanged may include such employee or former employee who is an inventor.

(i) Funding may be provided by the non-federal collaborating party to the Federal laboratory for the participation of the Federal employee in developing or commercializing an invention, including costs for salary and other expenses, such as benefits and travel.

(ii) Royalties from inventions received through a license agreement negotiated with the Federal laboratory and paid by the Federal laboratory to an inventor who is a Federal employee are considered Federal compensation.

(3) Where an employee leaves Federal service in order to receive salary or other compensation from a non-Federal organization, a Federal laboratory may use reinstatement authority in accordance with 5 CFR 315.401, or other applicable authorities, to rehire the former Federal employee at the conclusion of the exchange.

§ 17.5 Personnel exchanges to a Federal agency.

For exchanges in which a Federal Agency provides funds for the non-federal personnel—

(a) Outside personnel with expertise in scientific commercialization may be brought in to a Federal laboratory through the Presidential Innovation Fellows program (see 5 CFR 213.3102(r)) for Entrepreneur-In-Residence programs or similar, related programs.

(b) An Agency will engage with the General Services Administration (GSA) to transfer funding for exchanged personnel, and will work with GSA to select and place Entrepreneurs-In-Residence at the laboratory for the purposes of evaluating the laboratory's technologies, and providing technical consulting to facilitate readying a technology for commercialization by an outside entity.

Kent Rochford,

Associate Director for Laboratory Programs.

[FR Doc. 2016–14723 Filed 6–24–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 450

Federal Transit Administration

49 CFR Part 613

[Docket No. FHWA–2016–0016; FHWA RIN 2125–AF68; FTA RIN 2132–AB28]

Metropolitan Planning Organization Coordination and Planning Area Reform

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA); U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA and FTA propose revisions to the transportation planning regulations to promote more effective regional planning by States and metropolitan planning organizations (MPO). The goal of the proposed revisions is to result in unified planning products for each urbanized area (UZA), even if there are multiple MPOs designated within that urbanized area. Specifically it would result in MPOs developing a single metropolitan transportation plan, a single transportation improvement program (TIP), and a jointly established set of performance targets for the entire urbanized area and contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan. If multiple MPOs are designated within that urbanized area, they would jointly prepare these unified planning products. To accomplish this, the proposed revisions clarify that the metropolitan planning area must include the entire urbanized area and contiguous area expected to become urbanized within 20 years.

These proposed revisions would better align the planning regulations with statutory provisions concerning the establishment of metropolitan planning area (MPA) boundaries and the designation of MPOs. This includes the statutory requirement for the MPA to include an urbanized area in its entirety, and the exception provision to allow more than one MPO to serve a single MPA if warranted by the size and complexity of the MPA. The rulemaking would establish clearer operating procedures, and reinstate certain coordination and decisionmaking requirements for situations where there is more than one MPO serving an MPA. The proposed rule includes a requirement for unified planning products for the MPA including jointly established performance targets within an MPA, and a single metropolitan transportation plan and TIP for the entire MPA in order to result in planning products that reflect the regional needs of the entire urbanized area. These unified planning products would be jointly developed by the multiple MPOs in such MPAs where more than one MPO is designated. The FHWA and FTA propose to phase in implementation of these proposed coordination requirements and the proposed requirements for MPA boundary and MPO boundaries agreements over 2 years.

DATES: Comments must be received on or before August 26, 2016.

ADDRESSES: Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov*, or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov*. The Web site is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *https://www.federalregister.gov* and the Government Publishing Office's Web site at: *http://www.gpo.gov*.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Harlan W. Miller, Planning Oversight and Stewardship Team (HEPP–10), (202) 366–0847; or Ms. Janet Myers, Office of the Chief Counsel (HCC–30), (202) 366–2019. For FTA: Ms. Sherry Riklin, Office of Planning and Environment, (202) 366–5407; Mr. Dwayne Weeks, Office of Planning and Environment, (202) 493–0316; or Mr. Christopher Hall, Office of Chief Counsel, (202) 366–5218. Both agencies are located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., ET for FHWA, and 9 a.m. to 5:30 p.m., ET for FTA, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Summary

This regulation proposes to improve the transportation planning process by strengthening the coordination of MPOs and States and promoting the use of regional approaches to planning and decisionmaking. The proposed rule would emphasize the importance of applying a regional perspective during the planning process, to ensure that transportation investments reflect the needs and priorities of an entire region. Recognizing the critical role MPOs play in providing for the well-being of a region, this proposed rule would strengthen the voice of MPOs in the transportation planning process.

This proposed rule would revise the regulatory definition of "metropolitan planning area" (MPA) to better align with the statutory requirements in 23 U.S.C. 134 and 49 U.S.C. 5303.[1] Specifically, the proposed rule would amend the definition of MPA in 23 CFR 450.104 to include the conditions in 23 U.S.C. 134(e)(2) that require the MPA, at a minimum, include the entire urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. By aligning the regulatory definition of the MPA with the statute, the proposed rule would acknowledge that the MPA is dynamic. The MPA is the basic geographic unit for metropolitan planning; therefore this requirement will ensure that planning activities consider the entire region of the urbanized area consistently.

An exception in 23 U.S.C. 134(d)(7) allows multiple MPOs to be designated within a single MPA if the Governor and MPO determine that the size and complexity of the area make multiple MPOs appropriate; the proposed rule would establish certain requirements applicable in such instances where multiple MPOs serve a single MPA. It would also establish certain requirements applicable in such instances where an MPO's urbanized area spreads into the MPAs of neighboring MPOs. First, the proposed rule would clarify that MPA boundaries are not necessarily synonymous with MPO boundaries. Second, the proposed rule would amend § 450.310(e) of the regulation to clarify that, where more than one MPO serves an MPA, the Governor and affected MPOs will establish or adjust the boundaries for each MPO within the MPA by agreement. Third, the proposed rule would establish additional coordination requirements for areas where multiple MPOs are designated within the MPA. Under the proposed rule, the Governor and MPOs would determine whether the size and complexity of the MPA make the designation of multiple MPOs appropriate; if they determine it is not appropriate then the MPOs would be required to merge or adjust their jurisdiction such that there is only one MPO within the MPA. If they determine that designation of multiple MPOs is appropriate, then the MPOs may remain separate, with separate boundaries of responsibility within the MPA, as established by the affected MPOs and the Governor. However, the proposed rule would require those multiple separate MPOs to jointly develop unified planning products: A single long range plan (referred to as the metropolitan transportation plan), a single TIP, and a jointly established set of performance targets for the MPA.

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[1] For simplicity, the remainder of this NPRM refers only to the planning provisions codified in title 23, although similar provisions also are codified in chapter 53 of title 49.

The requirement for unified planning products also applies to urbanized areas that cross State lines. In multistate urbanized areas, the Governors and MPOs designated within the MPA must jointly determine whether the size and complexity of the MPA warrant designation of more than one MPO and must jointly develop unified planning products.

These requirements for a single planning process and a single metropolitan transportation plan to accommodate the intended growth of a region will enable individuals within that region to better engage in the planning process and facilitate their efforts to ensure that the growth trajectory matches their vision and goals. In order to support the development of these single documents, the MPOs would be required to establish procedures for joint decisionmaking, including a process for resolving disagreements.

Additionally, the proposed rule seeks to strengthen the role that MPOs play in the planning process by requiring States and MPOs to agree to a process for resolving disagreements and including that process in the documentation reviewed by FHWA and FTA when they make a planning finding under 23 U.S.C. 135(g)(8). The planning finding is a determination on whether the transportation planning process through which statewide transportation plans and programs are developed is consistent with 23 U.S.C. 134–135.

These proposed changes to the planning regulations are designed to facilitate metropolitan and statewide transportation planning processes that are more efficient, more comprehensible to stakeholders and the public, and more focused on projects that address critical regional needs. The proposed rule would help position MPOs to respond to the growing trend of urbanization. It would better align the planning processes with the regional scale envisioned by the performance-based planning framework and particularly those measures focused on congestion and system performance. The proposed rule also would help MPOs to achieve economies of scale in planning by working together and drawing on a larger pool of human, material, financial, and technological resources.

TABLE OF KEY CHANGES PROPOSED BY THE NPRM

Proposed change	Description	Key regulatory sections
Metropolitan Planning Area (MPA) boundaries.	The metropolitan planning area shall include—at a minimum—the entire urbanized area plus any contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan.	450.104 (Definitions). 450.312 (Metropolitan planning area boundaries).
Determination that more than one MPO in an MPA is appropriate.	If after the publication of this rule or the release of the Decennial Census, there is more than one MPO designated within a single MPA, the Governor and MPO must determine whether the size and complexity of the MPA make designation of more than one MPO appropriate. If they determine it is not appropriate, those MPOs would be required to merge.	450.310 (MPO designation and re-designation).
Coordination for multiple MPOs within an MPA.	Where multiple MPOs are designated within a metropolitan planning area, they shall jointly develop the metropolitan transportation plan, TIP, and performance targets for the MPA. Additionally, the MPOs shall establish procedures for joint decisionmaking as well as a process for resolving disagreements.	450.104 (Definitions). 450.306 (Scope of the metropolitan transportation planning process). 450.324 (Development and content of the metropolitan transportation plan). 450.326 (Development and content of the TIP).
Coordination of planning process activities between State and MPO.	States and MPOs shall maintain a current planning agreement, including a process for resolving disagreements. States and MPOs shall coordinate on information, studies, or analyses within the MPA.	450.208 (Coordination of planning process activities).

II. Background

MPA and MPO Boundaries

The metropolitan planning statute defines an MPA as "the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection [134](e)" 23 U.S.C. 134(b)(1). The agreement on the geographic area is subject to the minimum requirements contained in 23 U.S.C. 134(e)(2)(A), which states that each MPA "shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan".

The MPA and MPO provisions in 23 U.S.C. 134 make it clear that the intent for a typical metropolitan planning structure is to have a single MPO per urbanized area. However, the statute does create an exception in 23 U.S.C. 134(d)(7), which provides that more than one MPO may be designated within an existing MPA only if the Governor and the existing MPO determine that the size and complexity of the existing MPA make designation of more than one MPO for the area appropriate. Section 134(d)(7) reinforces the interpretation that the norm envisioned by the statute is that urbanized areas not be divided into multiple planning areas.

In 1991, the Intermodal Surface Transportation Efficiency Act was enacted with provisions intended to strengthen metropolitan planning. In particular, the law gave MPOs responsibility for coordinated planning to address the challenges of regional congestion and air quality issues. This enhanced planning role for MPOs was defined in the 1993 planning regulation, which was written to carry out these changes to statute. The 1993 planning regulation described a single coordinated planning process for the metropolitan planning area (MPA) resulting in a single metropolitan transportation plan for the MPA. In several locations, the 1993 regulation recognized the possibility of multiple MPOs within a single MPA and provided expectations for coordination, which included an overall transportation plan for the entire area. (See 58 FR 58040, October 28, 1993). The 1993 regulation stated in the former § 450.310(g) that "where more than one MPO has authority within a metropolitan planning area or a nonattainment or maintenance area, there shall be an agreement between the State departments(s) of transportation and the MPOs describing how the processes will be coordinated to assure the development of an overall transportation plan for the metropolitan planning area." Further, that regulation stated in former § 450.312(e) that where "more than one MPO has authority in a metropolitan planning area . . . the MPOs and the Governor(s) shall cooperatively establish the boundaries of the metropolitan planning area . . . and the respective jurisdictional responsibilities of each MPO." In practice, however, many MPOs interpreted the MPA to be synonymous with the boundaries of their MPO's jurisdiction, even in those areas where multiple MPOs existed within a single urbanized area, resulting in multiple "MPAs" within a single urbanized area.

In 2007, the FHWA and FTA updated the regulations to align with changes made in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users and its predecessor, the Transportation Equity Act for the 21st Century. The revised regulations reflected the practice of having multiple "MPAs" within a single urbanized area, although the statute pertaining to this issue had not changed. The 2007 regulation refers to multiple MPOs within an urbanized area rather than multiple MPOs within an MPA, and the term "MPA" was used to refer synonymously to the boundaries of an MPO. The regulations stated "if more than one MPO has been designated to serve an urbanized area, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries, particularly in cases in which a proposed transportation investment extends across the boundaries of more than one MPA." See 72 FR 7224, February 14, 2007. The FHWA and FTA adopted that language as § 450.314(d), and redesignated it in a 2016 rulemaking as § 450.314(e).[2] The 2007 rule also added § 450.312(h), which explicitly recognizes that, over time, an urbanized area may extend across multiple MPAs. The 2007 rulemaking did not address how to reconcile these regulatory changes with the statutory minimum requirement that an MPA include the urbanized area in its entirety.

As a result, since 2007, the language of the regulation has supported the possibility of multiple MPOs within an urbanized area rather than within an MPA. The FHWA and FTA have concluded this 2007 change in the regulatory definition has fostered confusion about the statutory requirements and resulted in less efficient planning outcomes where multiple TIPs and metropolitan transportation plans are developed within a single urbanized area. This proposed rule is designed to correct the problems that have occurred under the 2007 rule and return to the structure embodied in the rule before the 2007 amendments and envisioned in statute. The additional coordination requirements pertain to all MPOs designated within the MPA boundaries.

Illustrations of metropolitan areas are included in the docket to aid understanding of the distinction between MPO and MPA boundaries, and also the difference between the way MPAs have been designated in practice and the minimum area that must be included as a result of this proposed rulemaking. These illustrations will help clarify the coordination requirements proposed in this rulemaking.

MPO Coordination Within an MPA

The metropolitan planning statute calls for "each MPO to prepare and update a transportation plan for its metropolitan planning area" and "develop a TIP for the metropolitan planning area." 23 U.S.C. 134(i)(1)(A) and (j)(1)(A). As discussed above, the metropolitan planning statute includes an exception provision in 23 U.S.C. 134(d)(7) that allows more than one MPO in an MPA under certain conditions. In some instances, multiple MPOs have been designated not only within a single MPA, but also within a single urbanized area in an MPA. Presently, such MPOs typically create separate metropolitan transportation plans and TIPs for separate parts of the urbanized area. Currently, the regulations require that where multiple MPOs exist within the same urbanized area, their written agreements must describe how they will coordinate activities. However, the extent and effectiveness of coordination varies, and in some cases effective coordination on regional needs and interests can prove challenging. Ultimately, the Secretary of Transportation believes, and FHWA and FTA concur, that the end result of two or more separate metropolitan transportation planning processes, resulting in two or more separate plans and TIPs for a single urbanized area is most often both inefficient and confusing to the public. For example, members of the public may be affected by projects in multiple MPO jurisdictions, either because they live in the area of one MPO and work or regularly travel to another, or because the MPOs' jurisdictional lines bisect their community. They would therefore find it necessary to contribute to each MPO's separate planning process in order to have their regional concerns adequately considered. Public participation in transportation planning is critical to ensuring that the investment decisions meet the needs of the affected communities.

Further, a regional perspective is needed if metropolitan transportation planning is to maximize economic opportunities, while also addressing the externalities of growth such as congestion, air and water quality impacts, and impacts on resilience. The

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[2] Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning; Final Rule, 81 FR 34050, May 27, 2016.

Secretary of Transportation believes, and FHWA and FTA concur, that joint decisionmaking is necessary in the multiple MPO situations to best ensure application of a regional perspective. Accordingly, this rulemaking addresses coordination and decisionmaking requirements for MPOs that are subject to the 23 U.S.C. 134(d)(7) exception to the one-MPO-per-MPA structure of the metropolitan planning statute.

Coordination Between States and MPOs

The statewide planning statute calls for a continuing, cooperative, and comprehensive process for developing the statewide plan and the statewide transportation improvement program (STIP). 23 U.S.C. 135(a)(3). The statute requires States to develop the long range statewide plan and the STIP in cooperation with MPOs designated under 23 U.S.C. 134. 23 U.S.C. 135(f)(2)(A) and (g)(2)(A). While these statutes require that the State work in cooperation with the MPOs on long-range statewide transportation plans and STIPs, the extent to which MPO voices are heard varies significantly. The nature of decisionmaking authority of MPOs and States varies due to numerous factors, including the extent of local funding for transportation projects. The Secretary of Transportation believes that the voices of MPOs will be strengthened by having a single coordinated metropolitan transportation plan and TIP for each MPA, which should create a united position on transportation needs and priorities within that urbanized area. Ultimately, each relationship between State and MPO is unique, and there may not be a single coordination process that is appropriate for all areas of the country. However, it is the opinion of the Secretary of Transportation that there must be adequate cooperation between States and MPOs. The FHWA and FTA concur in those views, and therefore this proposed rule would require that States and MPOs demonstrate evidence of cooperation, including the existence of an agreed upon dispute resolution process.

The purpose of the Planning program is to use public funds effectively and FHWA and FTA welcome ideas to improve our planning processes. As such, FHWA and FTA seek comment on how DOT can incorporate processes to further ensure that Federal funds are used efficiency by States and MPOs. How can the Statewide and Non metropolitan and Metropolitan Transportation Planning process provide stronger incentives to States and MPOs to manage transportation funding more effectively?

III. Section-by-Section Discussion

Section 450.104—Definitions

The proposed rule would revise the definition of "metropolitan planning area" in § 450.104 to add language to align the definition with the basic statutory requirements for MPA boundaries. The purpose of the revision is to help reduce confusion about MPA requirements. The current definition describes the MPA as the geographic area determined by agreement between the MPO(s) for the area and the Governor. That definition does not include any reference to the minimum requirement in 23 U.S.C. 134(e)(2)(A) that the MPA must include the entire urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan. The revised definition would add a description of the minimum requirement from the statute, and describe the 23 U.S.C. 134(e)(2)(B) option to include more than the minimum geographic area. The FHWA and FTA specifically ask for comments on whether the rule ought to expressly address how States and MPOs should determine MPA boundaries where two or more MPAs are contiguous or can be expected to be contiguous in the near future. For example, should the rule provide that such MPAs must merge? Alternatively, should the rule allow the States and MPOs to tailor the MPA boundaries and the 20-year urbanization forecast to take the proximity of other MPAs into account?

The term "Metropolitan Transportation Plan" is revised by changing the location and number of MPO references in the definition, and by adding a reference to the MPA. Similar changes are proposed for the definition of "Transportation Improvement Program" to make it clear the definition encompasses situations where multiple MPOs in an MPA work together to develop a unified TIP. The inclusion of new references to the MPA in the definitions clarifies that the Metropolitan Transportation Plan and the TIP are developed through the metropolitan transportation planning process for the entire MPA.

Section 450.208—Coordination of Planning Process Activities

The proposed rule would strengthen and clarify expectations for State-MPO coordination, and would require metropolitan planning agreements to include coordination strategies and dispute resolution procedures. Section 450.208(a)(1) previously encouraged States to rely on MPO data and analysis for areas within the MPA; the rule would now require coordination between States and MPOs. This change is proposed to ensure States and MPOs employ consistent data, assumptions and other analytical materials when doing transportation planning; this does not affect roles and responsibilities for project prioritization. The section would be further amended by adding language to require the State and MPO to maintain a current planning agreement that includes a process for resolving disagreements. The metropolitan planning agreement, and its inclusion of strategies for coordination and the resolution of disagreements would be included among the other relevant documents considered by FHWA and FTA as part of their periodic determination under 23 U.S.C. 135(g)(8) whether the transportation planning process through which statewide transportation plans and programs are developed is consistent with 23 U.S.C. 134–135.

Section 450.218—Development and Content of the Statewide Transportation Improvement Program (STIP)

The proposed rule would change the reference to "MPO" to "MPO(s)" in two places. This is to more clearly recognize the possibility that multiple MPOs may be involved with the development of a single metropolitan TIP.

Section 450.226—Phase-In of New Requirements

The proposed rule would provide a phase-in provision for the proposed requirement in 23 CFR 450.208(a)(1) that metropolitan planning agreement must include strategies for coordination and the resolution of disagreements. In proposed § 450.226(h), the rule would provide a phase-in period of 2 years after the publication date of a final rule. The compliance date for all other proposed changes in 23 CFR part 450, subpart A would be the effective date of the final rule. The FHWA and FTA seek comments on the appropriateness of the proposed 2-year phase-in period.

Section 450.300—Purpose

The proposed rule would add a reference to MPA in the first sentence in § 450.300(a). The addition makes it clear that an MPO carries out the planning process for its MPA. This change will enhance the consistency in the rule, maintaining the statutory focus on the MPO as carrying out planning for its MPA, of which one or more entire urbanized areas are a part.

Section 450.306—Scope of the Metropolitan Transportation Planning Process

The proposed rule would add a new paragraph to § 450.306(d). Where there are multiple MPOs for an MPA, the new provision would require the MPOs to jointly establish the MPA's performance targets under 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d). This requirement for a joint target-setting process would be consistent with the requirements established in the proposed rule for a joint metropolitan plan and TIP for the MPA shared by the MPOs. The FHWA and FTA request comments on the proposed language, and request ideas for alternatives that might better accomplish the goals embodied in the proposal. Those goals are to ensure performance targets appropriately reflect the needs and priorities of the MPA as a whole, and to avoid a situation where the MPOs within a single MPA select inconsistent or conflicting performance targets.

In paragraph (i), the proposed rule would change the reference from "MPO" to "MPO(s)" in the last sentence of the paragraph. This is to more clearly recognize the possibility that multiple MPOs may be involved with the development of an abbreviated plan or TIP using simplified procedures.

Section 450.310—Metropolitan Planning Organization Designation and Redesignation

As provided in statute, some MPAs will necessarily be so large and complex that multiple MPOs are needed within the MPA. The proposed rule reflects the view, based on an interpretation of the planning statutes and on FHWA and FTA experiences, that when there are multiple MPOs within the same MPA, enhanced coordination and joint decisionmaking procedures are needed to ensure a coordinated and comprehensive planning process within the MPA. The proposed rule would revise § 450.310(e) by clarifying that more than one MPO can be designated for an MPA only when the Governor and MPO(s) determine it is warranted, in accordance with § 450.310(e). This change would reinforce the statutory principle that ordinarily only one MPO shall be designated for an MPA. The proposed rule retains the statutory standard permitting the designation of multiple MPOs within an MPA only if the Governor and existing MPO determine that the MPA's size and complexity necessitate multiple MPOs. Several references in the existing rule to "urbanized areas" would be replaced with "MPA" to better align with the statutory language.

The proposed rule would articulate in § 450.310(e) the limited exemption to the requirement of one MPO per MPA and the requirements applicable when multiple MPOs are designated within the same MPA. The case could arise that multiple MPOs that were previously designated will come to be located within the same MPA, either because this rule, once effective, will require some Governors and MPOs to reevaluate the bounds of MPAs, or due to the future merger of urbanized areas following a Decennial Census. In those situations, paragraph (e) provides that the Governor and MPOs would have to determine whether the size and complexity of the MPA warrant the designation of multiple MPOs.

The statute envisions a single MPO per MPA, with the exception that more than one MPO may be designated only if the Governor and existing MPO determine that the size and complexity of the metropolitan planning area make the designation of multiple MPOs appropriate. However, because of the past practice of many MPOs and Governors treating the term MPA as essentially synonymous with the territory of any particular MPO, many MPOs are not in compliance with the statute. This rule would require some MPOs and Governors to conceptualize for the first time the bounds of the MPAs as geographically distinct from the jurisdictional boundaries of the MPOs. Accordingly, for any MPOs that newly share an MPA with one or more other MPOs as a result of this rulemaking enforcing the statutory definition of MPA, the affected MPOs and Governor must make a determination that the MPA is of a size and complexity that makes multiple MPOs appropriate, or must merge the MPOs in MPAs where the Governor and MPOs determine that the size and complexity do not make multiple MPOs appropriate.

If the Governor and MPOs determine that multiple MPOs are not warranted based on the size and complexity of the MPA, those MPOs would have to merge and follow the redesignation procedures in § 450.310(h). Where it is determined that multiple MPOs are warranted, coordination still would be required among the MPOs in the affected MPA under the rule, with revisions to emphasize that the MPOs would jointly develop a unified plan, TIP, and performance targets for the entire MPA. The MPOs still would be required to establish official, written agreements that clearly identify areas of coordination, the division of transportation planning responsibilities among and between the MPOs, and procedures for joint decisionmaking and the resolution of disagreements—all for and within the affected MPA. Together with the Governor, those MPOs would jointly establish the MPO boundaries within the MPA.

The proposed rule would change a reference to "entire MPA" in paragraph (m), concerning coordination in multistate metropolitan areas, to "entire metropolitan area." The FHWA and FTA believe "metropolitan area" is consistent with "multistate metropolitan area" and more clearly conveys the intent of the paragraph.

Section 450.312—Metropolitan Planning Area Boundaries

The proposed rule would reorganize, and make technical edits to, existing § 450.312. The proposed rule would add or clarify requirements through revisions in paragraphs (c), (f), (h), and (i).

The proposed rule would reorganize § 450.312(a) by switching the order of the first two sentences. The proposed rule would move certain references to "MPA" and add language in proposed § 450.312(a)(1) to clarify and emphasize that an agreement between the Governor and an MPO concerning the boundaries of an MPA is subject to the minimum requirement that the MPA contain the entire existing urbanized area plus the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan. The proposed rule also adds a new § 450.312(a)(2) to clarify that when MPOs are contiguous to the same non-urbanized area that is expected to become urbanized within a 20-year forecast period for the transportation plan, they must agree on their mutual MPA boundaries so that their boundaries do not overlap.

Section 450.312(b) would be reorganized. Section 450.312(b) and (c) would be edited for consistency with the requirement that an MPA contain an urbanized area in its entirety.

Section 450.312(f) would be revised to more closely align with the language of 23 U.S.C. 134(f). That provision calls for the Secretary to encourage the Governors and MPOs in a multistate metropolitan area to coordinate transportation planning across the entire metropolitan area. The FHWA and FTA concluded the statute's use of the term "metropolitan area," rather than the statutorily-defined term "MPA," reflects an intention to promote coordinated planning across a broader area than a single MPA. This interpretation takes into consideration the plain language meaning of "metropolitan area." as well as the historical use of the term by the Federal Government.[3] The type of coordination called for in 23 U.S.C. 134(f), as reflected in the proposed revisions to § 450.312(f), reaches beyond MPAs to include not only the core urban areas but also outlying areas that are economically and socially integrated with the urban areas. The proposed rule also would add language describing the compact authority contained in 23 U.S.C. 134(f).

Section 450.312(h) would be entirely rewritten for consistency with the proposed rule's emphasis on the statutory requirement that all of an urbanized area be contained in the same MPA. As proposed, § 450.312(h) would describe the organizational options available to Governors and MPOs where more than one MPO is designated in an MPA, as authorized by the exception in 23 U.S.C. 134(d)(7). Proposed § 450.312(h)(1) through (3) would describe minimum requirements applicable where the multiple MPOs exist in a single MPA. The three requirements would be (1) a written agreement among the MPOs to identify how planning decisions will be made and carried out, (2) use of joint decisionmaking to develop a single metropolitan transportation plan and TIP for the entire MPA, and (3) establishment of the boundaries for each MPO within the MPA by agreement of the Governor and the affected MPOs.

The proposed rule would revise § 450.312(i), which addresses reviews of MPA boundaries after each Census. The changes would include clarifying that the minimum requirements for MPAs apply in this situation. Following a Decennial Census, the MPO(s) are required to review the MPA boundaries to ensure compliance with the minimum statutory requirements. This includes changes in urbanized areas that result in the merging of previously separate urbanized areas, or expansion of urbanized areas into a neighboring MPA. Under the proposed rule, if a Census results in two previously separate urbanized areas being defined as a single urbanized area, the Governor and MPO(s) would have to redetermine the affected MPAs as a single MPA that includes the entire new urbanized area plus the contiguous area expected to become urbanized within a 20-year forecast period of the transportation plan. The MPOs may remain separate only if the Governor and MPOs determine that the size and complexity of the MPA make it appropriate to have multiple MPOs designated for the area, as described in 23 U.S.C. 134(d)(7). This paragraph also clarifies the responsibilities when two or more MPOs may be adjacent to the same non-urbanized area that is expected to become urbanized within a 20-year forecast period for the transportation plan, or when an urbanized area expands into a neighboring MPA. In these situations, the Governor and MPOs are encouraged to merge adjacent MPAs when urbanized areas are contiguous or when the urbanized areas are expected to become contiguous within a 20-year forecast period for the transportation plan, but they must at a minimum agree on their mutual MPA boundaries. This paragraph also establishes a timeline for compliance following a Decennial Census that results in the merger of two or more previously separate MPAs.

The proposed rule would add a new paragraph—§ 450.312(j)—which would enumerate the situations in which a Governor and MPOs are encouraged to merge multiple MPAs into a single MPA, including when multiple urbanized areas are directly adjacent to each other, when they are expected to grow to become adjacent within 20 years, or when they are adjacent to the same non-urbanized area that is expected to become urbanized within 20 years.

The proposed rule would change a reference in the renumbered § 450.312(k) from "MPO" to "MPO(s)" for consistency with other proposed changes.

Section 450.314—Metropolitan Planning Agreements

The proposed rule would change several references in § 450.314 from "MPO" to "MPO(s)" for consistency with other proposed changes in the rule.

The proposed rule would make several changes to § 450.314(e). The rule would change "an urbanized area" in the first sentence to "an MPA," to better reflect the statutory relationship between MPOs, MPAs, and urbanized areas. The sentence would also be changed to require development of a single metropolitan transportation plan and TIP for an MPA. Where a proposed transportation investment extends across the boundaries of more than one MPA, the proposed rule would require MPOs to coordinate to assure the development of consistent metropolitan transportation plans and TIPs. This would replace language in the existing rule that calls for consistent plans and TIPs across the MPA. The proposed rule would require, rather than encourage, the use of coordinated data collection, analysis, and planning assumptions across the MPA. The proposed rule would strongly encourage the use of such practices across neighboring MPOs that are not within the same MPA. The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption.

The proposed rule would eliminate the phrase "urbanized area" from § 450.314(f), concerning multistate MPAs, and change existing references from "multistate area" to "multistate MPA." These changes will make the provision more consistent with the planning statute and other proposed changes in the rule.

Under the proposed rule, § 450.314(g) would be revised for consistency with the statutory requirement that all of an urbanized are be included within the same MPA. The proposed rule would clarify that the rule's existing requirement for a written agreement on roles and responsibilities for meeting transportation management area (TMA) requirements applies where more than one MPO serve the MPA containing the TMA.

Similar changes would be made in § 450.314(h), to clarify that the cooperative development and sharing of information related to performance management applies when an MPA includes an urbanized area that has been designated as a TMA as well as an urbanized area that is not a TMA.

Section 450.316—Interested Parties, Participation, and Consultation

The proposed rule would revise § 450.316(b), (c), and (d) by changing references from "MPO" to "MPO(s)." These changes would make the references consistent with other changes proposed in this rule.

Section 450.324—Development and Content of the Metropolitan Transportation Plan

References to "MPO" in several parts of § 450.324 would be changed to "MPO(s)" for consistency with other proposed changes to the rule. The proposed rule would redesignate the current § 450.3249(c) through (m) as § 450.324(d) through (n), respectively, and add a new paragraph (c). The new provision would require that, if more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall (1) jointly develop a single metropolitan transportation plan for the MPA; (2) jointly establish, for the MPA, the performance targets that address the performance measures described in 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d); and (3) agree to a process for making a single conformity determination on the joint plan (in nonattainment or maintenance areas). The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption. The FHWA and FTA also request comments on the question whether additional changes are needed in FHWA and FTA regulations on performance measures and target setting (*e.g.,* 23 CFR part 490) to cross-reference this new planning provision on target-setting.

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[3] *See, e.g.,* the U.S. Census Bureau discussions in "Metropolitan Areas" available online at *https://www.census.gov/history/www/programs/geography/metropolitan_areas.html* (as of March 2016) and "Metropolitan Areas Standards Review Project (MASRP)" available online at *http://www.census.gov/population/metro/data/masrp.html* (as of march 2016); *see also* Office of management and Budget discussion in its Notice of Standards for Defining Metropolitan and Micropolitan Statistical Areas (65 FR 82228, at 82228–82229 (December 27, 2000).

Section 450.326—Development and Content of the Transportation Improvement Program

The proposed rule would add a sentence to § 450.326(a) to require that in MPAs with multiple MPOs the MPOs must jointly develop a single TIP for the MPA. The rule would require such MPOs, if in nonattainment or maintenance areas, to agree on a process for making a single conformity determination on the joint TIP. The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption.

The proposed rule would change "MPO" to "MPO(s)" in paragraphs (a), (b), (j), and (p). Those changes would be made for better consistency with other changes proposed in the rulemaking.

Section 450.328—TIP Revisions and Relationship to the STIP

The proposed rule would change "MPO" to "MPO(s)" in § 450.328(a), (b), and (c). The changes would be made for better consistency with other changes proposed in the rule.

Section 450.330—TIP Action by the FHWA and the FTA

The proposed rule would change "MPO" to "MPO(s)" in § 450.330(a) and (c). Section 450.330(c) would be clarified by changing the first part of the first sentence from "[i]f an MPO has not . . .", to "[i]f an MPO or MPOs have not . . ." All these changes are for better consistency with proposed revisions in other parts of the rule concerning how planning requirements apply where there are multiple MPOs in an MPA provisions, as authorized by the exception provision in 23 U.S.C. 134(d)(7).

Section 450.332—Project Selection From the TIP

The proposed rule would change "MPO" to "MPO(s)" in § 450.332(b) and (c), for better consistency with other changes proposed in the rule.

Section 450.334—Annual Listing of Obligated Projects

The proposed rule would change "MPO" to "MPO(s)" in § 450.334(a), for better consistency with other changes proposed in the rulemaking.

Section 450.336—Self-Certifications and Federal Certifications

The proposed rule would change "MPO" to "MPO(s)" in several places in § 450.336(b), for better consistency with other changes proposed in the rule.

Section 450.340—Phase-In of New Requirements

The proposed rule would add phase-in implementing provisions to § 450.340 for certain parts of the proposed rule. The compliance date for all other proposed changes would be the effective date of the final rule.

In a new paragraph (h), FHWA and FTA propose giving States and MPOs 2 years before they would have to be fully compliant with the MPA boundary and MPO boundaries agreement provisions in §§ 450.310 and 450.312, and with the requirements for jointly established performance targets and a single metropolitan transportation plan and TIP for the entire MPA. The proposed rule would require the Governor and MPOs to document their determination of whether the size and complexity of the MPA justify the designation of multiple MPOs, however, the decision would not be subject to approval by FHWA and FTA. Full compliance for all MPOs within the MPA would be required before the earliest next regularly scheduled update of a metropolitan transportation plan for any MPO within the MPA, following the second anniversary of the effective date of a final rule, if adopted. The FHWA and FTA seek comment on the appropriateness of the proposed 2-year phase-in period.

IV. Regulatory Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and considered to the extent practicable. In addition to late comments, FHWA and FTA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after FHWA and FTA have had the opportunity to review the comments submitted.

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA and FTA have determined that this proposed rule is a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures. This proposed regulation seeks to improve the clarity of the planning rules by addressing ambiguity in MPO boundaries and responsibilities and better aligning the regulations with the statute. Additionally, the MPOs shall establish procedures for joint decisionmaking as well as a process for resolving disagreements. These changes are also intended to result in better outcomes for the MPOs, State agencies, providers of public transportation and the public, by restoring a regional focus for metropolitan planning, and by unifying MPO processes within an urbanized area in order to improve the ability of the public to understand and participate in the transportation planning process. The joint planning requirements of this rule affect primarily urbanized areas with multiple MPOs planning for the same area, or 142 of the 409 MPOs in the country. The affected MPOs are: (1) MPOs that have been designated for an urbanized area for which other MPOs also have been designated and/or (2) MPOs where an adjacent urbanized area has spread into its MPA boundary. The MPOs designated as an MPO in multiple MPAs, in which one or more other MPOs are also designated, would be required to participate in the planning processes for each MPA. Thus, under this rule, MPOs that have jurisdiction in more than one MPA would be required to participate in multiple separate planning processes. However, the affected MPOs could exercise several options to reduce or eliminate these impacts, including adjustment of MPA boundaries to eliminate overlap and by merging MPOs. The FHWA and FTA are seeking comments on what other options affected MPOs could exercise to reduce the overlap while meeting the statutory and regulatory requirements. The FHWA and FTA expect that such responses will reduce the number of MPOs ultimately affected by these coordination requirements.

All MPOs will be required to review their agreements with State DOTs and providers of public transportation to ensure that there are written procedures for joint decisionmaking and dispute resolution. The FHWA and FTA expect that the MPOs, State DOTs and providers of public transportation will undertake this review and update as they identify how they will implement a performance based planning and programming process required by MAP–21 and revised Statewide and Nonmetropolitan Transportation and Metropolitan Transportation Final Rule (FHWA RIN: 2125–AF52; FTA RIN: 2132–AB10). Because FHWA and FTA anticipate that the reviews would occur due to other existing requirements and in the absence of the proposed rule, the incremental impact, to the extent that there is any, should be quite small.

In some cases, a Governor (or Governors in the case of multistate urbanized areas) and MPOs could determine that the size and complexity of the area make multiple MPOs appropriate. The proposed rule would require those multiple separate MPOs to jointly develop unified planning products: A single metropolitan transportation plan, a single TIP, and a jointly established set of performance targets for the MPA. This should not create a large burden, and will in some cases reduce overall planning costs. Because MPOs within the same urban area will produce single planning documents, there will be less overlapping and duplicative work. Thus, the rule will enhance efficiency in planning processes for some areas, and generate cost-savings due to creating single rather than multiple documents as well as through pooling of resources and sharing data, models, and other tools. However, the MPOs that are not accustomed to coordinating across boundaries will have to establish relationships and protocols, and reconcile procedures. Coordination could create some initial costs, but those will diminish over time. There is also expected to be some offsetting costs for State DOTs and MPOs due to the necessity of updating metropolitan planning agreements to include dispute resolution processes. These costs are expected to be primarily experienced in the initial year, as processes are developed.

To the extent that there are any costs, 80 percent are directly reimbursable through Federal transportation funds allocated for metropolitan planning (23 U.S.C. 104(f) and 49 U.S.C. 5303(h)) and for State planning and research (23 U.S.C. 505 and 49 U.S.C. 5313). Thus, the costs to the affected MPOs should be minimal.

The FHWA and FTA also expect there will be some cost savings for State DOTs, which will benefit from having fewer TIPs to incorporate into their STIPs. There will also be benefits to the public if the coordination requirements result in a planning process in which public participation opportunities are transparent and unified for the entire region, and if members of the public have an easier ability to engage in the planning process.

The FHWA and FTA seek comments and available data on the costs and benefits of the proposals of this rulemaking.

In addition, this action complies with the principles of Executive Order 13563. After evaluating the costs and benefits of these proposed amendments, the FHWA and FTA anticipate that the net economic impact of this rulemaking would be minimal. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA and FTA have evaluated the effects of this action on small entities and have determined that the action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses the obligation of Federal funds to State DOTs for Federal-aid highway projects. The proposed rule affects two types of entities: State governments and MPOs. State governments do not meet the definition of a small entity under 5 U.S.C. 601, which have a population of less than 50,000.

The MPOs are considered governmental jurisdictions, and to qualify as a small entity they would need to serve less than 50,000 people. The MPOs serve urbanized areas with populations of 50,000 or more. Therefore, the MPOs that might incur economic impacts under this proposed rule do not meet the definition of a small entity.

I hereby certify that this regulatory action would not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The FHWA and FTA have determined that this NPRM does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule does not include a Federal mandate that may result in expenditures of $155.1 million or more in any one year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. The FHWA and FTA will publish a final analysis, including its response to public comments, when it publishes a final rule. Additionally, the definition of "Federal mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program and Federal Transit Act permits this type of flexibility.

D. Executive Order 13132 (Federalism Assessment)

The FHWA and FTA have analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132. The FHWA and FTA have determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA and FTA have also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

E. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The DOT has analyzed this proposed rule under the PRA and has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

G. National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This action qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and directives) and 771.117(c)(1) (activities that do not lead directly to construction) for FHWA, and 23 CFR 771.118(c)(4) (planning and administrative activities which do not involve or lead directly to construction) for FTA. The FHWA and FTA have evaluated whether the action would involve unusual or extraordinary circumstances and have determined that this action would not.

H. Executive Order 12630 (Taking of Private Property)

The FHWA and FTA have analyzed this proposed rule under Executive Order (E.O.) 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA and FTA do not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under E.O. 12630.

I. Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Executive Order 13045 (Protection of Children)

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA and FTA certify that this action would not cause an environmental risk to health or safety that might disproportionately affect children.

K. Executive Order 13175 (Tribal Consultation)

The FHWA and FTA have analyzed this action under E.O. 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to State DOTs for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

L. Executive Order 13211 (Energy Effects)

The FHWA and FTA have analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA and FTA have determined that this is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

M. Executive Order 12898 (Environmental Justice)

The E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (available online at *http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm*) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. The DOT agencies must address compliance with E.O. 12898 and the DOT Order in all rulemaking activities.

The FHWA and FTA have issued additional documents relating to administration of E.O. 12898 and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A (FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations (available online at *http://www.fhwa.dot.gov/legsregs/directives/orders/664023a.htm*)). On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for States and MPOs to incorporate EJ into their planning processes (available online at *http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf*).

The FHWA and FTA have evaluated the final rule under the Executive order, the DOT Order, the FHWA Order, and the FTA Circular. The EJ principles, in the context of planning, should be considered when the planning process is being implemented at the State and local level. As part of their stewardship and oversight of the federally aided transportation planning process of the States, MPOs and operators of public transportation, FHWA and FTA encourage these entities to incorporate EJ principles into the statewide and metropolitan planning processes and documents, as appropriate and consistent with the applicable orders and the FTA Circular. When FHWA and FTA make a future funding or other approval decision on a project basis, they consider EJ.

Nothing inherent in the proposed rule would disproportionately impact minority or low-income populations. The proposed rule establishes procedures and other requirements to guide future State and local decisionmaking on programs and projects. Neither the proposed rule nor 23 U.S.C. 134 and 135 dictate the outcome of those decisions. The FHWA and FTA have determined that the proposed rule would not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

N. Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 450

Grant programs—transportation, Highway and roads, Mass transportation, Reporting and record keeping requirements.

49 CFR Part 613

Grant programs—transportation, Highways and roads, Mass transportation.

Issued in Washington, DC, on June 17, 2016, under authority delegated in 49 CFR 1.85.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

Carolyn Flowers,

Acting Administrator, Federal Transit Administration.

In consideration of the foregoing, FHWA and FTA propose to amend title 23, Code of Federal Regulations, part 450, and title 49, Code of Federal Regulations, part 613, as set forth below:

Title 23—Highways

PART 450—PLANNING ASSISTANCE AND STANDARDS

■ 1. The authority citation for part 450 continues to read as follows:

Authority: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 *et seq.;* 49 U.S.C. 5303 and 5304; 49 CFR 1.85 and 1.90.

■ 2. Amend § 450.104 by revising the definitions for "Metropolitan planning agreement", "Metropolitan planning area (MPA)", "Metropolitan transportation plan", and "Transportation improvement program (TIP)" to read as follows:

§ 450.104 Definitions.

* * * * *

Metropolitan planning agreement means a written agreement between the MPO(s), the State(s), and the providers of public transportation serving the metropolitan planning area that describes how they will work cooperatively to meet their mutual responsibilities in carrying out the metropolitan transportation planning process.

Metropolitan planning area (MPA) means the geographic area determined by agreement between the MPO(s) for the area and the Governor, which must at a minimum include the entire urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan, and may include additional areas.

* * * * *

Metropolitan transportation plan means the official multimodal transportation plan addressing no less than a 20-year planning horizon, that is developed, adopted, and updated by the MPO or MPOs through the metropolitan transportation planning process for the MPA.

* * * * *

Transportation improvement program (TIP) means a prioritized listing/program of transportation projects covering a period of 4 years that is developed and formally adopted by an MPO or MPOs as part of the metropolitan transportation planning process for the MPA, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53.

* * * * *

■ 3. Amend § 450.208 by revising paragraph (a)(1) to read as follows:

§ 450.208 Coordination of planning process activities.

(a) * * *

(1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. When carrying out transportation planning activities under this part, the State and MPOs shall coordinate on information, studies, or analyses for portions of the transportation system located in metropolitan planning areas. The State(s), the MPO(s) and the operators of public transportation must have a current metropolitan planning agreement, which will identify coordination strategies that support cooperative decisionmaking and the resolution of disagreements;

* * * * *

§ 450.218 [Amended]

■ 4. Amend § 450.218(b) by removing "MPO" and adding in its place "MPO(s)" in both places it appears.

■ 5. Amend § 450.226 by adding paragraph (g) to read as follows:

§ 450.226 Phase-in of new requirements.

* * * * *

(g) On and after [date 2 years after publication of the final rule], the State(s), the MPO(s) and the operators of public transportation must have a current metropolitan planning agreement, which will identify coordination strategies that support cooperative decision-making and the resolution of disagreements.

Subpart C—Metropolitan Transportation Planning and Programming

■ 6. Amend § 450.300 by:

■ a. Revising paragraph (a); and

■ b. Removing from paragraph (b) the word "Encourages" and adding in its place "Encourage".

The revision reads as follows:

§ 450.300 Purpose.

* * * * *

(a) Set forth the national policy that the MPO designated for each urbanized area is to carry out a continuing, cooperative, and comprehensive performance-based multimodal transportation planning process for its MPA, including the development of a metropolitan transportation plan and a TIP, that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and foster economic growth and development, while minimizing transportation-related fuel consumption and air pollution; and

* * * * *

■ 7. Amend § 450.306 by adding paragraph (d)(5) and revising paragraph (i) as follows:

§ 450.306 Scope of the metropolitan transportation planning process.

* * * * *

(d) * * *

(5) In MPAs in which multiple MPOs have been designated, the MPOs shall jointly establish, for the MPA, the performance targets that address performance measures or standards established under 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

* * * * *

(i) In an urbanized area not designated as a TMA that is an air quality attainment area, the MPO(s) may propose and submit to the FHWA and the FTA for approval a procedure for developing an abbreviated metropolitan transportation plan and TIP. In developing proposed simplified planning procedures, consideration shall be given to whether the abbreviated metropolitan transportation plan and TIP will achieve the purposes of 23 U.S.C. 134, 49 U.S.C. 5303, and these regulations, taking into account the complexity of the transportation problems in the area. The MPO(s) shall develop simplified procedures in cooperation with the State(s) and public transportation operator(s).

■ 8. Amend § 450.310 by revising paragraphs (e) and (m) introductory text to read as follows:

§ 450.310 Metropolitan planning organization designation and redesignation.

* * * * *

(e) Except as provided in this paragraph, only one MPO shall be designated for each MPA. More than one MPO may be designated to serve an MPA only if the Governor(s) and the existing MPO(s), if applicable, determine that the size and complexity of the MPA make designation of more than one MPO in the MPA appropriate.

In those cases where the Governor(s) and existing MPO(s) determine that the size and complexity of the MPA do make it appropriate that two or more MPOs serve within the same MPA, the Governor and affected MPOs by agreement shall jointly establish or adjust the boundaries for each MPO within the MPA, and the MPOs shall establish official, written agreements that clearly identify areas of coordination, the division of transportation planning responsibilities within the MPA among and between the MPOs, and procedures for joint decisionmaking and the resolution of disagreements. If multiple MPOs were designated in a single MPA prior to this rule or in multiple MPAs that merged into a single MPA following a Decennial Census by the Bureau of the Census, and the Governor(s) and the existing MPOs determine that the size and complexity do not make the designation of more than one MPO in the MPA appropriate, then those MPOs must merge together in accordance with the redesignation procedures in this section.

* * * * *

(m) Each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs shall, to the extent practicable, provide coordinated transportation planning for the entire metropolitan area. The consent of Congress is granted to any two or more States to:

* * * * *

■ 9. Section 450.312 is revised to read as follows:

§ 450.312 Metropolitan planning area boundaries.

(a) At a minimum, the boundaries of an MPA shall encompass the entire existing urbanized area (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan.

(1) Subject to this minimum requirement, the boundaries of an MPA shall be determined through an agreement between the MPO and the Governor.

(2) If two or more MPAs would otherwise include the same non-urbanized area that is expected to become urbanized within a 20-year forecast period, the Governor and the relevant MPOs are required to agree on the final boundaries of the MPA or MPAs such that the boundaries of the MPAs do not overlap. In such situations, the Governor and MPOs are encouraged, but not required, to combine the MPAs into a single MPA. Merger into a single MPA would also require the MPOs to merge in accordance with the redesignation procedures described in § 450.310(h), unless the Governor and MPO(s) determine that the size and complexity of the MPA make multiple MPOs appropriate, as described in § 450.310(e).

(3) The MPA boundaries may be further expanded to encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget.

(b) The MPA boundaries that existed on August 10, 2005 shall be retained for an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 *et seq.*) as of August 10, 2005. Such MPA boundaries may only be adjusted by agreement of the Governor and the affected MPO(s) in accordance with the redesignation procedures described in § 450.310(h). The boundaries for an MPA that includes an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 *et seq.*) after August 10, 2005, may be established to coincide with the designated boundaries of the ozone and/or carbon monoxide nonattainment area, in accordance with the requirements in § 450.310(b).

(c) An MPA boundary may encompass more than one urbanized area, but each urbanized area must be included in its entirety.

(d) MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas.

(e) Identification of new urbanized areas within an existing metropolitan planning area by the Bureau of the Census shall not require redesignation of the existing MPO.

(f) In multistate metropolitan areas, the Governors with responsibility for a portion of the multistate metropolitan area, the appropriate MPO(s), and the public transportation operator(s) are strongly encouraged to coordinate transportation planning for the entire multistate metropolitan area. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(g) The MPA boundaries shall not overlap with each other.

(h) Where the Governor and MPO(s) have determined that the size and complexity of the MPA make it appropriate to have more than one MPO designated for an MPA, the MPOs within the same MPA shall, at a minimum:

(1) Establish written agreements that clearly identify coordination processes, the division of transportation planning responsibilities among and between the MPOs, and procedures for joint decisionmaking and the resolution of disagreements;

(2) Through a joint decisionmaking process, develop a single TIP and a single metropolitan transportation plan for the entire MPA;

(3) Establish the boundaries for each MPO within the MPA, by agreement among all affected MPOs and the Governor.

(i) The MPO(s) (in cooperation with the State and public transportation operator(s)) shall review the MPA boundaries after each Census to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated urbanized area(s), and shall adjust them as necessary in order to encompass the entire existing urbanized area(s) plus the contiguous area expected to become urbanized within the 20-year forecast period of the metropolitan transportation plan. If after a Census, two previously separate urbanized areas are defined as a single urbanized area, not later than 180 days after the release of the U.S. Bureau of the Census notice of the Qualifying Urban Areas for a decennial census, the Governor and MPO(s) shall redetermine the affected MPAs as a single MPA that includes the entire new urbanized area plus the contiguous area expected to become urbanized within the 20-year forecast period of the metropolitan transportation plan. As appropriate, additional adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, improves access to modal systems, and promotes efficient overall transportation investment strategies. If more than one MPO is designated for urbanized areas that are merged following a Decennial Census by the Bureau of the Census, the State and the MPOs shall comply with the MPA boundary and MPO boundaries agreement provisions in §§ 450.310 and 450.312, and shall determine whether the size and complexity of the MPA make it appropriate for there to be more than one MPO designated within the MPA. If the size and complexity of the MPA do not make it appropriate to have multiple MPOs, the MPOs shall merge, in accordance with the redesignation procedures in § 450.310(h). If the size and complexity do warrant the designation of multiple MPOs within the MPA, the MPOs shall comply with the requirements for jointly established performance targets, and a single metropolitan transportation plan and TIP for the entire MPA, before the next metropolitan transportation plan update that occurs on or after two years after the release of the Qualifying Urban Areas for the Decennial Census by the Bureau of the Census, or within 4 years of the designation of the new UZA boundary, whichever occurs first.

(j) The Governor and MPOs are encouraged to consider merging multiple MPAs into a single MPA when:

(1) Two or more urbanized areas are adjacent to each other;

(2) Two or more urbanized areas are expected to expand and become adjacent within a 20 year forecast period; or

(3) Two or more neighboring MPAs would otherwise both include the same non-urbanized area that is expected to become urbanized within a 20-year forecast period.

(k) Following MPA boundary approval by the MPO(s) and the Governor, the MPA boundary descriptions shall be provided for informational purposes to the FHWA and the FTA. The MPA boundary descriptions shall be submitted either as a geo-spatial database or described in sufficient detail to enable the boundaries to be accurately delineated on a map.

■ 10. Section 450.314 is revised to read as follows:

§ 450.314 Metropolitan planning agreements.

(a) The MPO, the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO(s), the State(s), and the providers of public transportation serving the MPA. To the extent possible, a single agreement between all responsible parties should be developed. The written agreement(s) shall include specific provisions for the development of financial plans that support the metropolitan transportation plan (see § 450.324) and the metropolitan TIP (see § 450.326), and development of the annual listing of obligated projects (see § 450.334).

(b) The MPO(s), the State(s), and the providers of public transportation should periodically review and update the agreement, as appropriate, to reflect effective changes.

(c) If the MPA does not include the entire nonattainment or maintenance area, there shall be a written agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO(s) describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with the EPA's transportation conformity regulations (40 CFR part 93, subpart A). The agreement shall address policy mechanisms for resolving conflicts concerning transportation-related emissions that may arise between the MPA and the portion of the nonattainment or maintenance area outside the MPA.

(d) In nonattainment or maintenance areas, if the MPO is not the designated agency for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be a written agreement between the MPO and the designated air quality planning agency describing their respective roles and responsibilities for air quality related transportation planning.

(e) If more than one MPO has been designated to serve an MPA, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of a single metropolitan transportation plan and TIP for the MPA. In cases in which a proposed transportation investment extends across the boundaries of more than one MPA, the MPOs shall coordinate to assure the development of consistent metropolitan transportation plans and TIPs. If any part of the urbanized area is a nonattainment or maintenance area, the agreement also shall include State and local air quality agencies. If more than one MPO has been designated to serve an MPA, the metropolitan transportation planning processes for affected MPOs must reflect coordinated data collection, analysis, and planning assumptions across the MPA. Coordination of data collection, analysis, and planning assumptions is also strongly encouraged for neighboring MPOs that are not within the same MPA. Coordination efforts and outcomes shall be documented in subsequent transmittals of the UPWP and other planning products, including the metropolitan transportation plan and TIP, to the State(s), the FHWA, and the FTA.

(f) Where the boundaries of the MPA extend across two or more States, the Governors with responsibility for a portion of the multistate MPA, the appropriate MPO(s), and the public transportation operator(s) shall coordinate transportation planning for the entire multistate MPA, including jointly developing planning products for the MPA. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(g) If an MPA includes an urbanized area that has been designated as a TMA in addition to an urbanized area that is not designated as a TMA, the non-TMA urbanized area shall not be treated as a TMA. However, if more than one MPO serves the MPA, a written agreement shall be established between the MPOs within the MPA boundaries, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (*e.g.*, congestion management process, Surface Transportation Program funds suballocated to the urbanized area over 200,000 population, and project selection).

(h) The MPO(s), State(s), and the providers of public transportation shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the asset management plans for the NHS for each of the following circumstances: When one MPO serves an urbanized area, when more than one MPO serves an urbanized area, and when an MPA includes an urbanized area that has been designated as a TMA as well as an urbanized area that is not a TMA. These provisions shall be documented either as part of the metropolitan planning agreements required under paragraphs (a), (e), and (g) of this section, or documented it in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.

§ 450.316 [Amended]

■ 11. Amend § 450.316(b), (c), and (d) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

■ 12. Amend § 450.324 as follows:

■ a. In paragraph (a) replace “MPO” with “MPO(s)” wherever it occurs;

■ b. Redesignate paragraphs (c) through (m) as paragraphs (d) through (n), respectively;

■ c. Add new paragraph (c); and

■ d. In newly redesignated paragraphs (d), (e), (f), (g)(10), (g)(11)(iv), (h), (k), (l), and (n), remove “MPO” with and add in its place“MPO(s)” wherever it occurs.

The revisions read as follows:

§ 450.324 Development and content of the transportation improvement program (TIP).

* * * * *

(c) If more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall:

(1) Jointly develop a single metropolitan transportation plan for the MPA;

(2) Jointly establish, for the MPA, the performance targets that address the performance measures described in 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d); and

(3) Agree to a process for making a single conformity determination on the joint plan (in nonattainment or maintenance areas).

* * * * *

■ 13. Amend § 450.326 as follows:

■ a. Revise paragraph (a); and

■ b. In paragraphs (b), (j), and (p) remove “MPO” and add in its place “MPO(s)” wherever it occurs.

The revision reads as follows:

§ 450.326 Development and content of the transportation improvement program (TIP).

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. If more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall jointly develop a single TIP for the MPA and shall agree to a process for making a single conformity determination on the joint TIP (in nonattainment or maintenance areas). The TIP shall reflect the investment priorities established in the current metropolitan transportation plan and shall cover a period of no less than 4 years, be updated at least every 4 years, and be approved by the MPO(s) and the Governor. However, if the TIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. The MPO(s) may update the TIP more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any updated or amended TIP, in accordance with the Clean Air Act requirements and the EPA’s transportation conformity regulations (40 CFR part 93, subpart A).

* * * * *

§ 450.328 [Amended]

■ 14. Amend § 450.328(a), (b), and (c) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

§ 450.330 [Amended]

■ 15. Amend § 450.330 (a) and (c) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

§ 450.332 [Amended]

■ 16. Amend § 450.332(b) and (c) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

§ 450.334 [Amended]

■ 17. Amend § 450.334(a) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

§ 450.336 [Amended]

■ 18. Amend § 450.336(b)(1)(i), (b)(1)(ii), and (b)(2) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

■ 19. Amend § 450.340 as follows:

■ a. In paragraph (a) adding “or MPOs” after “MPO” wherever it occurs;

■ b. Adding paragraph (h) to read as follows:

§ 450.340 Phase-in of new requirements.

* * * * *

(h) States and MPOs shall comply with the MPA boundary and MPO boundaries agreement provisions in 450.310 and 450.312, shall document the determination of the Governor and MPO(s) whether the size and complexity of the MPA make multiple MPOs appropriate, and the MPOs shall comply with the requirements for jointly established performance targets, and a single metropolitan transportation plan and TIP for the entire MPA, before the next metropolitan transportation plan update that occurs on or after [date 2 years after the effective date of the final rule].

Title 49—Transportation

PART 613—METROPOLITAN AND STATEWIDE AND NONMETROPOLITAN PLANNING

■ 20. The authority citation for part 613 is revised to read as follows:

Authority: 23 U.S.C. 134, 135, and 217(g); 42 U.S.C. 3334, 4233, 4332, 7410 *et seq.;* 49 U.S.C. 5303–5306, 5323(k); and 49 CFR 1.51(f) and 21.7(a).

[FR Doc. 2016–14854 Filed 6–24–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

[Docket No. MSHA–2014–0030]

RIN 1219–AB87

Examinations of Working Places in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of change of starting time for public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) is announcing a change to the starting time for public hearings for the proposed rule addressing Examinations of Working Places in Metal and Nonmetal Mines, published on June 8, 2016. The start time for the previously announced public hearings for the proposed rule will be changed from 9:00 a.m. to 8:30 a.m. to accommodate the public meetings on MSHA’s request for information on Exposure of Underground Miners to Diesel Exhaust. The hearing dates and locations are unchanged.

DATES: The public hearing dates and locations are listed in the **SUPPLEMENTARY INFORMATION** section of this document. Comments for the proposed rule must be received by midnight Eastern Daylight Savings Time on September 6, 2016.

ADDRESSES: Comments, requests to speak, and informational materials for the rulemaking record may be sent to

MSHA by one of the following methods listed below:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-Mail: zzMSHA-comments@dol.gov.*
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.
- *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th Floor East, Suite 4E401.
- *Fax:* 202–693–9441.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email), 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Instructions: All submissions for the proposed rule must include RIN 1219–AB87 or Docket No. MSHA–2014–0030. MSHA posts all comments without change, including any personal information provided. Access comments electronically on *http://www.regulations.gov* and on MSHA's Web site at *https://www.msha.gov/regulations/rulemaking.*

Docket: The proposed rule for Examinations of Working Places in Metal and Nonmetal Mines was published on June 8, 2016 (81 FR 36818). The document is available on *https://www.regulations.gov* and on MSHA's Web site at *https://www.msha.gov/regulations/rulemaking/examinations-working-places-metal-and-nonmetal-mines.* Review comments in person at the Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452. Sign in at the receptionist's desk on the 4th Floor East, Suite 4E401.

Email Notification: To subscribe to receive email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to *https://www.msha.gov.*

Public Hearings: As previously announced on June 8, 2016 (81 FR 36818), the public hearings will be held in Salt Lake City, UT; Pittsburgh, PA; Arlington, VA; and Birmingham, AL. Please see the table below for locations, dates, and new starting times.

Date	Location	Contact number
July 19, 2016; 8:30 a.m.	Homewood Suites by Hilton, Salt Lake City—Downtown, 423 West 300 South, Salt Lake City, UT 84101.	(801) 363–6700.
July 21, 2016; 8:30 a.m.	Hyatt Place Pittsburgh—North Shore, 260 North Shore Drive, Pittsburgh, PA 15212	(412) 321–3000.
July 26, 2016; 8:30 a.m.	Mine Safety and Health Administration Headquarters, 201 12th Street, South, Rooms 7W204 & 7W206, Arlington, VA 22202.	(202) 693–9440.
August 4, 2016; 8:30 a.m. ..	Sheraton Birmingham Hotel, 2101 Richard Arrington Jr., Boulevard North, Birmingham, AL 35203.	(205) 324–5000.

The start time for the previously announced public hearings for the proposed is being changed from 9:00 a.m. to 8:30 a.m. to accommodate the public meetings on MSHA's request for information on Exposure of Underground Miners to Diesel Exhaust. The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. Each hearing will end when the last speaker speaks. Persons do not have to make a written request to speak; however, persons wishing to speak are encouraged to notify MSHA in advance for scheduling purposes.

Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The hearings will be conducted in an informal manner. Formal rules of evidence or cross examination will not apply.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. The transcript may be viewed at *https://www.regulations.gov/* and on MSHA's Web site at *https://www.msha.gov/regulations/rulemaking.*

MSHA will accept comments and other appropriate information for the record from any interested party, including those not presenting oral statements, received by midnight Eastern Daylight Savings Time on September 6, 2016.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2016–15191 Filed 6–24–16; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57, 70, 72, and 75

[Docket No. MSHA–2014–0031]

RIN 1219–AB86

Exposure of Underground Miners to Diesel Exhaust

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for information; notice of public meetings.

SUMMARY: The Mine Safety and Health Administration (MSHA) is announcing the dates and locations of public meetings on the Agency's request for information on Exposure of Underground Miners to Diesel Exhaust, published on June 8, 2016. In the interest of efficiency, the public meetings will be held consecutively, on the same days in the same venues, as the public hearings announced in the MSHA's proposed rule addressing Examinations of Working Places in Metal and Nonmetal Mines, published on June 8, 2016.

DATES: The public meeting dates and locations are listed in the **SUPPLEMENTARY INFORMATION** section of this document. Comments for the request for information must be received by midnight Eastern Daylight Savings Time on September 6, 2016.

ADDRESSES: Comments, requests to speak, and informational materials for the rulemaking record may be sent to MSHA by one of the following methods listed below:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EMail: zzMSHA-comments@dol.gov.*
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.
- *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00

p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.

- *Fax:* 202–693–9441.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email), 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Instructions: All submissions for the request for information must include RIN 1219–AB86 or Docket No. MSHA–2014–0031. MSHA posts all comments without change, including any personal information provided. Access comments electronically on *http://www.regulations.gov* and on MSHA's Web site at *https://www.msha.gov/regulations/rulemaking.*

Docket: The request for information on Exposure of Underground Miners to Diesel Exhaust (81 FR 36826) was published on June 8, 2016. The document is available on *https://www.regulations.gov* and on MSHA's Web site at *https://www.msha.gov/regulations/rulemaking/exposure-underground-miners-diesel-exhaust.* Review comments in person at the Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.

Email Notification: To subscribe to receive email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to *https://www.msha.gov.*

Public Meetings: The public meetings will be held in Salt Lake City, UT; Pittsburgh, PA; Arlington, VA; and Birmingham, AL. Please see the table below for locations, and dates. The public meetings will begin immediately following the conclusion of all testimony on the Examinations of Working Places in Metal and Nonmetal Mines proposed rule.

Date	Location	Contact No.
July 19, 2016	Homewood Suites by Hilton, Salt Lake City—Downtown, 423 West 300 South, Salt Lake City, UT 84101.	(801) 363–6700
July 21, 2016	Hyatt Place Pittsburgh—North Shore, 260 North Shore Drive, Pittsburgh, PA 15212	(412) 321–3000
July 26, 2016	Mine Safety and Health Administration Headquarters, 201 12th Street, South, Rooms 7W204 & 7W206, Arlington, VA 22202.	(202) 693–9440
August 4, 2016	Sheraton Birmingham Hotel, 2101 Richard Arrington Jr. Boulevard North, Birmingham, AL 35203.	(205) 324–5000

Public Meetings for Exposure of Underground Miners to Diesel Exhaust Request for Information

MSHA invites industry, labor and other interested parties to provide information and data on the effectiveness of the existing standards in controlling miners' exposures to diesel exhaust, including Diesel Particulate Matter (DPM). MSHA especially invites stakeholders to provide information and data on approaches that may enhance control of DPM and diesel exhaust exposures to improve protections for miners in underground coal and metal and nonmetal mines.

The public meetings will begin immediately following the conclusion of all testimony on the Examinations of Working Places in Metal and Nonmetal Mines proposed rule and conclude at 5 p.m., or until the last speaker speaks.

The meetings will be conducted in an informal manner. Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The verbatim transcript may be viewed at *https://www.regulations.gov/* and on MSHA's Web site at: *https://www.msha.gov/regulations/rulemaking.*

Comments must be received by midnight Eastern Daylight Savings Time on September 6, 2016.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2016–15190 Filed 6–24–16; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2015–1118]

RIN 1625–AA01

Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting and request for comments; extension of comment period.

SUMMARY: The Coast Guard announces a public meeting to receive comments on an advance notice of proposed rulemaking entitled "Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA" that was published in the **Federal Register** on Tuesday, April 19, 2016. As stated in that document, the Coast Guard is considering amending the regulations for Hampton Roads, VA and adjacent waters anchorages by establishing a new anchorage, near Cape Charles, VA on the Lower Chesapeake Bay.

DATES: A public meeting will be held on Tuesday, July 19, 2016, from 6 p.m. to 7:30 p.m. and on July 20, 2016, from 6:30 to 8 p.m. to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. All comments and related material submitted after the meeting must be received by the Coast Guard on or before Wednesday, August 31, 2016.

ADDRESSES: The public meeting on July 19, 2016, from 6 p.m. to 7:30 p.m. will be held at Slover Public Library Meeting Room, 235 E. Plume St., Norfolk, VA 23510, telephone 757–617–7986. The public meeting on July 20, 2016, from 6:30 p.m. to 8 p.m. will be held at Eastern Shore Community College Lecture Hall, 29300 Lankford Highway, Melfa, VA, 23410.

This document serves to inform the public that the Coast Guard has extended the public comment period for advance notice of proposed rulemaking (ANPRM); Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA to Wednesday, August 31, 2016. The public comment period for this ANPRM was originally scheduled to end on Monday, July 18, 2016.

You may submit written comments identified by docket number USCG–2015–1118 using the Federal eRulemaking Portal at *http://www.regulations.gov.* Comments and related material must be received by the Coast Guard on or before August 31, 2016. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or the advance proposed rule, please call or email LCDR Barbara Wilk, Sector Hampton Roads Waterways Management Officer, Coast Guard; telephone 757–668–5581, email *Barbara.wilk@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

We published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** on April 19, 2016 (81 FR 22939), entitled "Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA." In it we stated our intention to hold two public meetings, and to publish a notice announcing the location and date (81 FR 22940). This document is the notice of that meeting.

In the ANPRM, we stated that the Coast Guard is considering amending the regulations for Hampton Roads, VA and adjacent waters anchorages by establishing a new anchorage, near Cape Charles, VA on the Lower Chesapeake Bay.

You may view the ANPRM in our online docket, in addition to supporting documents prepared by the Coast Guard (Illustration Contemplated Anchorage R), and comments submitted thus far by going to *http://www.regulations.gov.* Once there, insert "USCG–2015–1118" in the "Search" box and click "Search."

We encourage you to participate in this rulemaking by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Comments submitted before or after the meetings must reach the Coast Guard on or before Wednesday, August 31, 2016. We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Agenda of Public Meeting

The agenda includes the following:

(1) Introduction of panel members.

(2) Overview of meeting format.

(3) Background on proposed anchorage regulation.

(4) Comments from interested persons. Comments may be delivered in written form at the public meeting and made part of the docket or delivered orally not to exceed 10 minutes.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Barbara Wilk at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this document.

Public Meeting

The Coast Guard will hold a public meeting regarding its "Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA" advance notice of proposed rulemaking on Tuesday, July 19, 2016, from 6 p.m. to 7:30 p.m. at Slover Public Library Meeting Room, 235 E. Plume St., Norfolk, VA 23510, telephone 757–617–7986. The public meeting on July 20, 2016, from 6:30 p.m. to 8 p.m. will be held at Eastern Shore Community College Lecture Hall, 29300 Lankford Highway, Melfa, VA, 23410. A written summary of the meeting and comments will be placed in the docket.

Dated: June 14, 2016.

Christopher S. Keane,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2016–15033 Filed 6–24–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0767; FRL–9948–42–Region 4]

Air Plan Approval; KY Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ), on April 26, 2013, to demonstrate that the Commonwealth meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide (NO_2) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. KDAQ certified that the Kentucky SIP contains provisions that ensure the 2010 1-hour NO_2 NAAQS is implemented, enforced, and maintained in Kentucky. EPA is proposing to determine that Kentucky's infrastructure submission, submitted on April 26, 2013, addresses certain infrastructure elements for the 2010 1-hour NO_2 NAAQS.

DATES: Written comments must be received on or before July 27, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0767 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Richard Wong, *Air Regulatory Management Section,* Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8726. Mr. Wong can be reached via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On February 9, 2010, EPA published a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour NO_2 NAAQS to EPA no later than January 22, 2013.[1]

Today's action is proposing to approve Kentucky's infrastructure SIP submission for the applicable requirements of the 2010 1-hour NO_2 NAAQS, with the exception of the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J), the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility of prongs 1, 2 and 4 of section 110(a)(2)(D)(i) and the regulation of minor sources and minor modifications under section 110(a)(2)(C). On March 18, 2015, EPA approved Kentucky's April 26, 2013, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2010 1-hour NO_2 NAAQS. *See* 80 FR 14019. Therefore, EPA is not proposing any action pertaining to these requirements. With respect to Kentucky's infrastructure SIP submission related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility of prongs 1, 2, and 4 of section 110(a)(2)(D)(i) and the regulation of minor sources and minor modifications under section 110(a)(2)(C), EPA is not proposing any action today. EPA will act on these provisions in a separate action. For the aspects of Kentucky's submittal proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that Kentucky's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2010 1-hour NO_2 NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)."[2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from Kentucky that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

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[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "Kentucky Administrative Regulation", "KAR", or "Regulation" indicates that the cited regulation has been approved into Kentucky's federally-approved SIP. The term "Kentucky Revised statute" or "KRS" indicates cited Kentucky state statutes, which are not a part of the SIP unless otherwise indicated.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned above, this element is not relevant to today's proposed rulemaking.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new

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[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] See, *e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule," 70 FR 25162, at 25163—65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.*, that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] See, *e.g.*, "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007, submittal.

NAAQS than for a minor revision to an existing NAAQS.[10]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

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[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. What is EPA's analysis of how Kentucky addressed the elements of the sections 110(a)(1) and (2) "infrastructure" provisions?

Kentucky's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) in Kentucky Administrative Regulations (KAR), Title 401, and Kentucky Revised Statutes (KRS) as described below.

1. 110(a)(2)(A): *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Kentucky's infrastructure SIP submission lists several regulations as relevant to air quality control regulations in KAR 50 to 52. Specifically, Regulation 50:010–066 deal with general administrative procedures. Emission limits and other control measures, means, and techniques as well as schedules and timetables for the 2010 1-hour NO_2 NAAQS are found in Regulation 51, *Attainment and Maintenance of the National Ambient Air Quality Standards,* and Regulation 52, *Permits, Registrations, and Prohibitory Rules.* EPA has made the preliminary determination that the cited provisions are adequate to protect the 2010 1-hour NO_2 NAAQS in the Commonwealth.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[18]

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[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* SIPs are required to provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. KRS 22:10–100, and KAR 50:050, 51:017 and 052, and 53:005 and 010, provide KDAQ with the authority to collect and disseminate information relating to air quality and pollution and the prevention, control, supervision, and abatement thereof. Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the state's ambient monitors and auxiliary support equipment.[19] On July 1, 2015, Kentucky submitted its monitoring network plan to EPA, and on October 28, 2015, EPA approved this plan. Kentucky's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0767. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2010 1-hour NO_2 NAAQS.

3. 110(a)(2)(C) *Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). EPA approved the PSD component in a previous action and will act on state-wide regulation of new and modified minor sources and minor modifications of major sources in a separate action. Today's action on element C is solely on enforcement.

Enforcement: KDAQ's approved SIP Regulation 50:060, *Enforcement,* provides for enforcement of emission limits and control measures and construction permitting for new or modified stationary sources. EPA has made the preliminary determination that Kentucky's SIP is adequate for insuring compliance with the applicable requirements relating to enforcement for section 110(a)(2)(C) for the 2010 1-hour NO_2 NAAQS.

Preconstruction PSD Permitting for Major *Sources:* With respect to Kentucky's April 26, 2013, infrastructure SIP submission related to the PSD permitting requirements for major sources of section 110(a)(2)(C), EPA took final action to approve these provisions for the 2010 1-hour NO_2 NAAQS on March 18, 2015. *See* 80 FR 14019.

Regulation of Minor Sources and Modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source preconstruction program that regulates emissions of the 2010 1-hour NO_2 NAAQS. EPA is not proposing any action in this rulemaking related to the regulation of minor sources and minor modifications under section 110(a)(2)(C) and will consider these requirements in relation to Kentucky's 2010 1-hour NO_2 NAAQS infrastructure submission in a separate rulemaking.

4. 110(a)(2)(D)(i) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) because Kentucky's 2010 1-hour NO_2 NAAQS infrastructure submission did not address prongs 1 and 2.

110(a)(2)(D)(i)(II)—prong 3: With respect to Kentucky's infrastructure SIP submission related to the interstate transport requirements for PSD of section 110(a)(2)(D)(i)(II) (prong 3), EPA took final action to approve Kentucky's April 26, 2013, infrastructure SIP submission regarding prong 3 of D(i) for the 2010 1-hour NO_2 NAAQS on March 18, 2015. *See* 80 FR 14019.

110(a)(2)(D)(i)(II)—prong 4: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation to Kentucky's 2010 1-hour NO_2 NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* With respect to 110(a)(2)(D)(ii), Regulation 52:100, Section 6, *Public, Affected State, and U.S. EPA Review,* outlines how Kentucky will notify neighboring states of potential impacts from new or modified sources. EPA is unaware of any pending obligations for the Commonwealth of Kentucky pursuant to sections 115 or 126 of the CAA. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2010 1-hour NO_2 NAAQS.

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[18] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

[19] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Kentucky's SIP as meeting the requirements of sections 110(a)(2)(E). EPA's rationale for today's proposals respecting each section of 110(a)(2)(E) is described in turn below.

To satisfy the requirements of sections 110(a)(2)(E)(i) and (iii), Kentucky's infrastructure SIP submission describes that KRS 224:10–100, *Powers and Duties of the Cabinet,* and KAR 50:038, *Air Emissions Fees,* provide KDAQ with the authority to accept and administer laws and grants from the federal government and from other sources, public and private, for carrying out any of its functions, including its responsibility to implement its SIP. As evidence of the adequacy of KDAQ's resources, EPA submitted a letter to Kentucky on March 12, 2015, outlining section 105 grant commitments and the current status of these commitments for fiscal year 2014. The letter EPA submitted to Kentucky can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0767. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Kentucky satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2014 therefore Kentucky's grants were finalized. EPA has made the preliminary determination that Kentucky has adequate resources and authority for implementation of the 2010 1-hour NO_2 NAAQS.

Section 110(a)(2)(E)(ii) requires that states comply with section 128 of the CAA. Section 128 of the CAA requires that states include provisions in their SIP to address conflicts of interest for state boards or bodies that oversee CAA permits and enforcement orders and disclosure of conflict of interest requirements. Specifically, CAA section 128(a)(1) necessitates that each SIP shall require that at least a majority of any board or body which approves permits or enforcement orders shall be subject to the described public interest service and income restrictions therein. Subsection 128(a)(2) requires that the members of any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements. For purposes of section 128(a)(1), Kentucky has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by the Secretary of the KDAQ. As such, a "board or body" is not responsible for approving permits or enforcement orders in Kentucky, and the requirements of section 128(a)(1) are not applicable. For purposes of section 128(a)(2), KDAQ's SIP has been updated. On October 3, 2012, EPA finalized approval of Kentucky's July 17, 2012, SIP revision requesting incorporation of KRS 11A.020, 11A.030, 11A.040 and KRS 224.10–020 and 224.10–100 into the SIP to address the conflicts of interest disclosure requirements of section 128(a)(2). *See* 77 FR 60307. With the incorporation of these regulations into the Kentucky SIP, EPA has previously made the determination that the Commonwealth has adequately addressed the requirements of section 128(a)(2), and accordingly is proposing to determine that Kentucky has met the infrastructure SIP requirements of section 110(a)(2)(E)(ii). Therefore, EPA is proposing to approve KDAQ's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 7. 110(a)(2)(F) *Stationary Source Monitoring System:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. The Kentucky infrastructure submission describes how the major source and minor source emission inventory programs collect emission data throughout the Commonwealth and ensure the quality of such data. Kentucky meets these requirements through Chapter 50 *General Administrative Procedures,* specifically 401 KAR 50:050 *Monitoring.* 401 KAR 50:050, Section 1, *Monitoring Records and Reporting,* states that the cabinet may require a facility to install, use, and maintain stack gas and ambient air monitoring equipment and to establish and maintain records, and make periodic emission reports at intervals prescribed by the cabinet. 401 KAR 50:050 *Monitoring,* Section 1, *Monitoring, Records, and Reporting,* establishes the requirements for the installation, use, and maintenance of stack gas and ambient air monitoring equipment, and authorizes the cabinet to require the owner or operator of any affected facility to establish and maintain records for this equipment and make periodic emission reports at intervals prescribed by the cabinet. Also, KRS 224.10–100 (23) requires that any person engaged in any operation regulated pursuant to this chapter file with the cabinet reports containing information as to location, size, height, rate of emission or discharge, and composition of any substance discharged or emitted into the ambient air or into the waters or onto the land of the Commonwealth, and such other information the cabinet may require. The monitoring data collected and records of operations serve as the basis for a source to certify compliance, and can be used by Kentucky as direct evidence of an enforceable violation of the underlying emission limitation or standard. Thus, EPA is unaware of any provision preventing the use of credible evidence in the Kentucky SIP.

Additionally, Kentucky is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—NO_X, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Kentucky made its latest update to the

2011 NEI on December 23, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the stationary source monitoring systems related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) *Emergency Powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Kentucky's infrastructure SIP submission identifies air pollution emergency episodes and preplanned abatement strategies as outlined in Regulation 55:005, *Significant Harm Criteria.* Regulation 55:010, *Episodic Criteria,* defines pollutant concentration levels that justify the proclamation of an air pollutant alert, warning, or emergency while Regulation 55:015, *Episode Declaration,* authorizes KDAQ to curtail or reduce processes or operations that emit air pollutants whose criteria has been reached and are located in the affected areas for which an episode level has been declared. Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the Cabinet determines that the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, present a threat to the health of the public. In addition, KRS 224.10–100 *Powers and duties of cabinet* and KRS 224.10–410 *Order for discontinuance, abatement, or alleviation of condition or activity without hearing—Subsequent hearing,* establish the authority for Kentucky's secretary to issue orders to person(s) for discontinuance, abatement, or alleviation of any condition or activity without hearing because the condition or activity presents a danger to the health or welfare of the people of the state, and for the cabinet to require adoption of any remedial measures deemed necessary. EPA has made the preliminary determination that Kentucky's SIP, and state laws are adequate for emergency powers related to the 2010 1-hour SO_2 NAAQS. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for emergency powers related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submissions with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *Future SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. KDAQ has the authority for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Kentucky, as indicated in Regulations 51.010, *Attainment Status Designations,* 53.005, *General Provisions,* and 53:010, *Ambient Air Quality Standards.* KDAQ has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. It also has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Kentucky does not have any nonattainment areas for the 2010 1-hour NO_2 NAAQS but has made an infrastructure submission for this standard, which is the subject of this rulemaking. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2010 1-hour NO_2 NAAQS when necessary.

10. 110(a)(2)(J) *Consultation With Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve Kentucky's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127; and visibility protection requirements of part C of the Act. With respect to Kentucky's infrastructure SIP submission related to the preconstruction PSD permitting requirements of section 110(a)(2)(J), EPA took final action to approve Kentucky's April 26, 2013, 2010 1-hour NO_2 NAAQS infrastructure SIP for these requirements on March 18, 2015. *See* 80 FR 14019. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection requirements is described below.

110(a)(2)(J) (121 Consultation)—*Consultation With Government Officials:* Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and federal land managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Regulations 50:065, *Conformity of General Federal Actions,* 50:066, *Conformity of Transportation Plans, Programs, and Projects,* as well as Kentucky's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Kentucky adopted state-wide consultation procedures for the implementation of transportation conformity. Implementation of transportation conformity as outlined in the consultation procedures requires KDAQ to consult with Federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets for the SIP. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with government officials related to the 2010 1-hour NO_2 NAAQS when necessary.

110(a)(2)(J) (127 Public Notification)—*Public Notification:* These requirements are met through Regulation 55:015, *Episode Declaration,* which requires that KDAQ notify the public of any air pollution alert, warning, or emergency. The KDAQ Web site also provides air quality summary data, air quality index reports and links to more information regarding public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to provide public notification related to the 2010 1-hour NO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

110(a)(2)(J)—*Visibility Protection:* EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals. As such, EPA has made the preliminary determination that it does not need to address the visibility protection element of section 110(a)(2)(J) in Kentucky's infrastructure SIP submission related to the 2010 1-hour NO_2 NAAQS.

11. 110(a)(2)(K) *Air Quality and Modeling/Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made. KAR 50:040, *Air Quality Models,* incorporates by reference 40 CFR 52.21, which specifies that air modeling be conducted in accordance with 40 CFR part 51, Appendix W "Guideline on Air Quality Models. KRS 224.10–100(4) authorizes KDAQ to develop and conduct a comprehensive program for management of air resources in the Commonwealth. These provisions demonstrate that Kentucky has the authority to perform air quality modeling and provide relevant data for the purpose of predicting the effect on ambient air quality of the 2010 1-hour NO_2 NAAQS. Additionally, Kentucky participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for NO_X, which includes NO_2. Taken as a whole, Kentucky's air quality regulations demonstrate that KDAQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 1-hour NO_2 NAAQS. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2010 1-hour NO_2 NAAQS when necessary.

12. 110(a)(2)(L) *Permitting Fees:* This element necessitates that the SIP require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Funding for the Kentucky air permit program comes from a processing fee, submitted by permit applicants, required by KAR 50:038, *Air Emissions Fee,* and KRS 224.20–050, *Fee for Administration of Air Quality Program.* KDAQ ensures this is sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR. Additionally, Kentucky has a fully approved title V operating permit program at KAR 52:20[20] that cover the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Kentucky's SIP and practices adequately provide for permitting fees related to the 2010 NO_2 NAAQS, when necessary. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation/Participation by Affected Local Entities:* This element requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Chapter 77 of KRS, *Air Pollution Control,* and Regulations 50:066, *Conformity of Transportation Plans, Programs and Projects,* and 52:100, *Public, Affected State, and U.S. EPA Review,* authorize KDAQ to cooperate, consult, and enter into agreements with other agencies of the state, the Federal government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department." Furthermore, KDAQ has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP and Regional Haze Implementation Plan. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour NO_2 NAAQS when necessary.

V. Proposed Action

With the exception of the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), prong 3 of (D)(i), and (J), the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility of prongs 1, 2, and 4 of section 110(a)(2)(D)(i), and the regulation of minor sources and minor modifications under section 110(a)(2)(C), EPA is proposing to approve that Kentucky's April 26, 2013, infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS has met the above-described infrastructure SIP requirements.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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[20] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 10, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–15138 Filed 6–24–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0366; FRL–9948–20–Region 5]

Air Plan Approval; Minnesota; Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for the Flint Hills Resources, LLC Pine Bend Refinery (FHR) as submitted on May 1, 2015. The revision will consolidate existing permanent and enforceable SO_2 SIP conditions into the facility's joint Title I/Title V SIP document. This action highlights process modifications necessary to meet EPA's Tier 3 gasoline sulfur standards; a comprehensive monitoring strategy to better quantify SO_2 emissions from fuel gas-fired emission units; a new restrictive flaring procedure for refinery process units, and other updates and administrative changes. This revision results in a modeled reduction in SO_2 emissions from FHR and modeled SO_2 ambient air concentrations less than half of the national ambient air quality standards.

DATES: Comments must be received on or before July 27, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0366 at *http://www.regulations.gov* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: June 21, 2016.

Robert Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–15035 Filed 6–24–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0276; FRL–9948–18–Region 5]

Determination of Attainment by the Attainment Date; 2008 Ozone National Ambient Air Quality Standards; Cleveland, Ohio and St. Louis, Missouri-Illinois Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make a determination, under the Clean Air Act, that the Cleveland, Ohio and St. Louis, Missouri-Illinois areas attained the 2008 ozone National Ambient Air Quality Standards by the applicable attainment date of July 20, 2016. This proposed determination for each area is based on complete, quality-assured and certified ozone monitoring data for 2013–2015.

DATES: Comments must be received on or before July 27, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0276 at *http://www.regulations.gov* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov*.

Deborah Bredehoft, Air Planning and Development Branch, Environmental Protection Agency, Region 7, 11201 Renner Blvd., Lenexa, Kansas 66219, (913) 551–7164, *Bredehoft.Deborah@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, EPA is making this determination of attainment as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn for the affected area and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules and Regulations section of this **Federal Register**.

Dated: June 15, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

Dated: June 3, 2016.

Mark Hague,

Regional Administrator, Region 7.

[FR Doc. 2016–15049 Filed 6–24–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0251; FRL–9948–43–Region 4]

Air Plan Approval; SC Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC) on April 30, 2014, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 nitrogen dioxide (NO_2) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP submission. SC DHEC certified that the South Carolina SIP contains provisions that ensure the 2010 NO_2 NAAQS is implemented, enforced, and maintained in South Carolina. With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, and interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance and visibility in other states, for which EPA is proposing no action through this rulemaking, EPA is proposing to find that South Carolina's infrastructure SIP submission, provided to EPA on April 30, 2014, satisfies the required infrastructure elements for the 2010 NO_2 NAAQS.

DATES: Written comments must be received on or before July 27, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0251 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Richard Wong, *Air Regulatory Management Section,* Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Wong can be reached via telephone at (404) 562–8726 or electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On February 9, 2010, EPA published a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour

NO_2 NAAQS to EPA no later than January 22, 2013.[1]

Today's action is proposing to approve South Carolina's infrastructure SIP submission for the applicable requirements of the 2010 1-hour NO_2 NAAQS, with the exception of the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) and the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility (*i.e.*, prongs 1, 2, and 4 of section 110(a)(2)(D)(i)). On March 18, 2015, EPA approved South Carolina's April 30, 2014, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2010 1-hour NO_2 NAAQS. *See* 80 FR 14019. Therefore, EPA is not proposing any action pertaining to these requirements. With respect to South Carolina's infrastructure SIP submission related to interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility of prongs 1, 2, and 4 of section 110(a)(2)(D)(i), EPA is not proposing any action today. EPA will act on these provisions in a separate action. For the aspects of South Carolina's submittal proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that South Carolina's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2010 1-hour NO_2 NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and (2)."[2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from South Carolina that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

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[1] In these infrastructure SIP submissions states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "South Carolina Air Pollution Control Regulation" or "Regulation" indicates that the cited regulation has been approved into South Carolina's federally-approved SIP. The term "South Carolina statute" indicates cited South Carolina state statutes, which are not a part of the SIP unless otherwise indicated.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned above, this element is not relevant to today's proposed rulemaking.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular

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[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] See, *e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.*, that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] See, *e.g.*, "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

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[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. What is EPA's analysis of how South Carolina addressed the elements of the sections 110(a)(1) and (2) "infrastructure" provisions?

South Carolina's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Regulation 61–62.1, *Definitions and General Requirements,* and 61–62.5 (1), *Ambient Air Quality Standards* have been federally approved in the South Carolina SIP and include enforceable emission limitations and other control measures for activities that contribute to NO_2 concentrations in the ambient air. South Carolina statute 48–1–50(23) authorizes SC DHEC to adopt rules for the control of air pollution in order to comply with NAAQS. EPA has made the preliminary determination that the cited provisions are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance for the 2010 1-hour NO_2 NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[18]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* SIPs are required to provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. Regulation 61–62.5(7), *Prevention of Significant Deterioration,* and South Carolina statute 48–1–50(14), Powers of department, provide SC DHEC with the authority to collect and disseminate information relating to air quality and pollution and the prevention, control, supervision, and

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[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

[18] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

abatement thereof. Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the state's ambient monitors and auxiliary support equipment.[19] On July 20, 2015, South Carolina submitted its monitoring network plan to EPA, and on November 19, 2015, EPA approved this plan. South Carolina's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0251. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2010 1-hour NO_2 NAAQS.

3. 110(a)(2)(C) *Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements; enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.*, the major source PSD program). As discussed further below, in this action EPA is only proposing to approve the enforcement, and the regulation of minor sources and minor modifications aspects of South Carolina's section 110(a)(2)(C) infrastructure SIP submission.

Enforcement: SC DHEC cites to its SIP approved permit regulations for enforcement of NO_2 emission limits and control measures and construction permitting for new or modified stationary NO_2 sources (Regulations 61–62.5(7), *Prevention of Significant Deterioration*, and 61–62.5(7)(1), *Nonattainment New Source Review*, and Regulation 61–62.1, Section II, *Permit Requirements*). South Carolina cites to statute 48–1–50(11), which provides SC DHEC the authority to administer penalties for violations of any order, permit, regulation or standards. Additionally, SCDHEC is authorized under 48–1–50(3) and (4) to issue orders requiring the discontinuance of the discharge of air contaminants into the ambient air that create an undesirable level, and seek an injunction to compel compliance with the Pollution Control Act and permits, permit conditions and orders.

Preconstruction PSD Permitting for Major *Sources:* With respect to South Carolina's April 30, 2014, infrastructure SIP submission related to the PSD permitting requirements for major sources of section 110(a)(2)(C), EPA took final action to approve these provisions for the 2010 1-hour NO_2 NAAQS on March 18, 2015. *See* 80 FR 14019.

Regulation of Minor Sources and Modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2010 1-hour NO_2 NAAQS. South Carolina has a SIP-approved minor NSR permitting program at Regulation 61–62.1, Section II, *Permit Requirements*, that regulates the preconstruction permitting of minor modifications and construction of minor stationary sources.

EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for program enforcement of control measures and regulation of minor sources and modifications related to the 2010 1-hour NO_2 NAAQS.

4. 110(a)(2)(D)(i) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) because South Carolina's 2010 1-hour NO_2 NAAQS infrastructure submission did not address prongs 1 and 2.

110(a)(2)(D)(i)(II)—prong 3: With respect to South Carolina's infrastructure SIP submission related to the interstate transport requirements for PSD of section 110(a)(2)(D)(i)(II) (prong 3), EPA took final action to approve South Carolina's April 30, 2014, infrastructure SIP submission regarding prong 3 of D(i) for the 2010 1-hour NO_2 NAAQS on March 18, 2015. *See* 80 FR 14019.

110(a)(2)(D)(i)(II)—prong 4: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation South Carolina's 2010 1-hour NO_2 NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Regulation 61–62.5, Standards 7 and 7.1 (q)(2)(iv), *Public Participation*, outlines how South Carolina will notify neighboring states of potential impacts from new or modified sources. EPA is unaware of any pending obligations for the State of South Carolina pursuant to sections 115 or 126 of the CAA. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2010 1-hour NO_2 NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve South Carolina's SIP as meeting the requirements of sections 110(a)(2)(E). EPA's rationale for today's proposals respecting each

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[19] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

section of 110(a)(2)(E) is described in turn below.

With respect to section 110(a)(2)(E)(i) and (iii), SC DHEC develops, implements and enforces EPA-approved SIP provisions in the State. S.C. Code Ann. Section 48, Title 1 and S.C. Code Ann § 1–23–40 (the Administrative Procedures Act), as referenced in South Carolina's infrastructure SIP submission, provides the SC DHEC's general legal authority to establish a SIP and implement related plans. In particular, S.C. Code Ann. Section 48–1–50(12) grants SC DHEC the statutory authority to "[a]ccept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; [and to] accept, receive and receipt for Federal money given by the Federal government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs." S.C. Code Ann. Section 48, Title 2 grants SC DHEC statutory authority to establish environmental protection funds, which provide resources for SC DHEC to carry out its obligations under the CAA. Specifically, in Regulation 61–30, *Environmental Protection Fees,* SC DHEC established fees for sources subject to air permitting programs. For Section 110(a)(2)(E)(iii), the submission states that South Carolina does not rely on localities for specific SIP implementation.

The requirements of 110(a)(2)(E)(i) and (iii) are further confirmed when EPA performs a completeness determination for each SIP submittal. This provides additional assurances that each submittal provides evidence that adequate personnel, funding, and legal authority under State law has been used to carry out the State's implementation plan and related issues. This information is included in all prehearings and final SIP submittal packages for approval by EPA.

As evidence of the adequacy of SC DHEC's resources, EPA submitted a letter to South Carolina on April 19, 2016, outlining section 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to South Carolina can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0251. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. South Carolina satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2015, therefore South Carolina's grants were finalized.

Section 110(a)(2)(E)(ii) requires that states comply with section 128 of the CAA. Section 128 of the CAA requires that states include provisions in their SIP to address conflicts of interest for state boards or bodies that oversee CAA permits and enforcement orders and disclosure of conflict of interest requirements. Specifically, CAA section 128(a)(1) necessitates that each SIP shall require that at least a majority of any board or body which approves permits or enforcement orders shall be subject to the described public interest service and income restrictions therein. Subsection 128(a)(2) requires that the members of any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

With respect to 110(a)(2)(E)(ii), South Carolina satisfies the requirements of CAA section 128(a)(1) for the SC Board of Health and Environmental Control, which is the "board or body which approves permits and enforcement orders" under the CAA in South Carolina, through South Carolina statute 8–13–730. This statute provides that "[u]nless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates business with which that person is associated," and statute 8–13–700(A) states in part that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." South Carolina statute 8–13–700(B)(1)–(5) provides for disclosure of any conflicts of interest by public official, public member or public employee, which meets the requirement of CAA Section 128(a)(2) that "any potential conflicts of interest . . . be adequately disclosed." State statutes 8–13–730, 8–13–700(A), and 8–13–700(B)(1)–(5) have been approved into the South Carolina SIP as required by CAA section 128. Thus, EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for insuring compliance with the applicable requirements of section 110(a)(2)(E)(ii) relating to state boards for the 2010 NO_2 NAAQS.

7. 110(a)(2)(F) *Stationary Source Monitoring System:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. South Carolina's infrastructure SIP submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. These infrastructure SIP requirements are codified at Section III, Regulation 61–62.1, *Emissions Inventory.* South Carolina statute 48–1–22 requires owners or operators of stationary sources to compute emissions, submit periodic reports of such emissions and maintain records as specified by various regulations and permits, and to evaluate reports and records for consistency with the applicable emission limitation or standard on a continuing basis over time. The monitoring data collected and records of operations serve as the basis for a source to certify compliance, and can be used by South Carolina as direct evidence of an enforceable violation of the underlying emission limitation or standard. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the South Carolina SIP.

Additionally, South Carolina is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. South Carolina made its latest update to the 2011 NEI on April 1, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for the stationary source monitoring systems related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) *Emergency Powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. South Carolina's infrastructure SIP submission identifies air pollution emergency episodes and preplanned abatement strategies as outlined in Regulation 61–62.3, *Air Pollution Episodes.* S.C. Code Ann. Section 1–23–130 provides SC DHEC with the authority to immediately promulgate emergency regulations if it finds an imminent peril to public health, safety, or welfare, or to protect or manage natural resources if it finds abnormal or unusual conditions, immediate need, or the state's best interest requires immediate promulgation of emergency regulations. S.C. Code Ann. Section 48–1–50(3) provides SCDHEC with the authority to issue orders requiring the discontinuance of the discharge of air contaminants into the ambient air that create an undesirable level, resulting in pollution in excess of applicable standards, and S.C. Code Ann. Section 48–1–50(4) authorizes SCDHEC to file an action in court to seek injunctive relief to compel compliance with the Pollution Control Act. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for emergency powers related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submissions with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *Future SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. SC DHEC has the authority for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in South Carolina as indicated in South Carolina statute 48–1. This Section provides SC DHEC with the ability and authority to respond to calls for SIP revisions, and South Carolina has provided a number of SIP revisions over the years for implementation of the NAAQS. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2010 1-hour NO_2 NAAQS when necessary.

10. 110(a)(2)(J) *Consultation With Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve South Carolina's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection requirements of part C of the Act. With respect to South Carolina's infrastructure SIP submission related to the preconstruction PSD permitting requirements of section 110(a)(2)(J), EPA took final action to approve South Carolina's April 30, 2014, 2010 1-hour NO_2 NAAQS infrastructure SIP for these requirements on March 18, 2015. *See* 80 FR 14019. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection requirements is described below.

110(a)(2)(J) (121 Consultation)—*Consultation With Government Officials:* Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and federal land managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Regulation 61–62.5(7), *Prevention of Significant Deterioration,* South Carolina statute 48–1–50(8), *Powers of department,* as well as South Carolina's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. S.C. Code Section 48–1–50(8) provides SC DHEC with the necessary authority to "Cooperate with the governments of the United States or other states or state agencies or organizations, officials, or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements." South Carolina adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures include considerations associated with the development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the consultation procedures requires SC DHEC to consult with Federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with government officials related to the 2010 1-hour NO_2 NAAQS when necessary.

110(a)(2)(J) (127 Public Notification)—*Public Notification:* These requirements are met through Regulation 61–62.3, *Air Pollution Episodes,* which requires that SC DHEC notify the public of any air pollution alert, warning, or emergency. The SC DHEC Web site also provides air quality summary data, air quality index reports and links to more information regarding public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2010 1-hour NO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submissions with respect to section 110(a)(2)(J) public notification.

110(a)(2)(J)—*Visibility Protection:* EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. SC DHEC referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised

NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so SC DHEC does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that South Carolina's SIP submission is approvable for the visibility protection element of section 110(a)(2)(J) and that South Carolina does not need to rely on its regional haze program.

11. 110(a)(2)(K) *Air Quality and Modeling/Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. Regulation 61–62.1, *Definitions and General Requirements,* 61–62–5(2), *Ambient Air Quality Standards,* and 61–62–5(7), *Prevention of Significant Deterioration,* specify that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W "Guideline on Air Quality Models." The state's permitting and reporting requirements provide the necessary tools to conduct, evaluate, and provide air quality modeling data if necessary. Also, S.C. Code Ann. § 48–1–50(14) provides SC DHEC with the necessary authority to "Collect and disseminate information on air and water control." These standards demonstrate that South Carolina has the authority to perform air quality monitoring and provide relevant data for the purpose of predicting the effect on ambient air quality of the 2010 1-hour NO_2 NAAQS. Additionally, South Carolina supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for NO_X, which includes NO_2. Taken as a whole, South Carolina's air quality regulations demonstrate that SC DHEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 1-hour NO_2 NAAQS. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2010 1-hour NO_2 NAAQS when necessary.

12. 110(a)(2)(L) *Permitting Fees:* This element requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Funding for the South Carolina air permit program comes from a fees submitted by permit applicants under Regulation 61–30, *Environmental Protection Fees,* which prescribes fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations, establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process for refuting fees. Also, South Carolina statute 48–2–50, *Fees,* which prescribes that SC DHEC charge fees for environmental programs it administers pursuant to Federal and State law and regulations including those that govern the costs to review, implement and enforce PSD and NNSR permits. Additionally, South Carolina has a fully approved title V operating permit program at Regulation 61–62.70, *Title V Operation Permit Program,*[20] that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that South Carolina's SIP and practices adequately provide for permitting fees related to the 2010 NO_2 NAAQS, when necessary. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation/Participation by Affected Local Entities:* This element requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Regulation 61–62.5(7), *Prevention of Significant Deterioration,* and South Carolina statutes 48–1–50(8) and 1–23–40 authorize SC DHEC to cooperate, consult, and enter into agreements with other agencies of the state, the Federal government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department." Furthermore, SC DHEC has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the development of its Transportation Conformity SIP and Regional Haze Implementation Plan. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour NO_2 NAAQS when necessary.

V. Proposed Action

With the exception of the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), prong 3 of (D)(i), and (J) and the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility of prongs 1, 2, and 4 of section 110(a)(2)(D)(i), EPA is proposing to approve that South Carolina's April 30, 2014, infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS has met the above-described infrastructure SIP requirements.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

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[20] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action for the state of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Catawba Indian Nation Reservation is located within the State of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, South Carolina statute 27–16–120, "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities." However, EPA has determined that because this proposed rule does not have substantial direct effects on an Indian Tribe because, as noted above, this action is not approving any specific rule, but rather proposing that South Carolina's already approved SIP meets certain CAA requirements. EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 10, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–15145 Filed 6–24–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124 and 125

[EPA–HQ–OW–2016–0145; FRL–9948–35–OW]

RIN 2040–AF25

Notice of Extension to Comment Period on the National Pollutant Discharge Elimination System: Applications and Program Updates Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Comment Period.

SUMMARY: EPA is extending the comment period for the notice, "National Pollutant Discharge Elimination System (NPDES): Applications and Program Updates." In response to stakeholder requests, EPA is extending the comment period for an additional 15 days, from July 18, 2016 to August 2, 2016.

DATES: The comment period for the notice that was published on May 18, 2016 (81 FR 31344), is extended. Comments must be received on or before August 2, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2016–0145, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Erin Flannery-Keith, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; (202) 566–0689; *flannery-keith.erin@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 18, 2016 EPA published in the **Federal Register** (81 FR 31344) a proposed rule that would make targeted revisions to the NPDES regulations. These revisions would make the regulations consistent with the 1987 CWA Amendments and with applicable judicial decisions. These revisions would delete certain regulatory provisions that are no longer in effect and clarify the level of documentation that permit writers must provide for permitting decisions. EPA is also asking for public comments on potential ways to enhance public notice and participation in the permitting process. CWA section 402 established the NPDES permitting program and gives EPA authority to write regulations to implement the NPDES program. 33 U.S.C. 1342(a)(1), (2). The proposed rule, as initially published in the **Federal Register**, provided for written comments to be submitted to EPA on or before July 18, 2016 (a 60-day public comment period). Since publication, EPA has received a request for additional time to submit comments. EPA is extending the public comment period for 15 days until August 2, 2016.

Dated: June 17, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–15134 Filed 6–24–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 123
Monday, June 27, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Outreach

[FOA No.: OAO–0010]

Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program

Catalog of Federal Domestic Assistance (CFDA) No.: 10.443.

AGENCY: Office of Advocacy and Outreach, USDA.

ACTION: Funding Opportunity Announcement (FOA).

Catalog of Federal Domestic Assistance (CFDA) No.: 10.443.

SUMMARY: This notice announces the availability of funds and solicits applications from eligible entities to compete for financial assistance through the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program (hereinafter known as the "2501 Program").

The overall goal of the 2501 Program is to assist socially disadvantaged and veteran farmers and ranchers in owning and operating farms and ranches while increasing their participation in agricultural programs and services provided by the U.S. Department of Agriculture (USDA). This program will assist eligible community-based and non-profit organizations, higher education institutions, and tribal entities in providing outreach and technical assistance to socially disadvantaged and veteran farmers and ranchers.

DATES: Proposals must be received by July 29, 2016, at 11:59 p.m. EST, at *www.grants.gov.* Proposals received after this deadline will *not* be considered for funding.

ADDRESSES: *How to File a Complaint of Discrimination:* To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at: *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, *Fax:* (202) 690–7442, *Email: program.intake@usda.gov.*

FOR FURTHER INFORMATION CONTACT:

Agency Contact

U.S. Department of Agriculture, DM—Office of Advocacy and Outreach, Attn: Kenya Nicholas, Program Director, Whitten Building, Room 520–A, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 720–6350, Fax: (202) 720–7704, Email: *OASDVFR2016@osec.usda.gov.*

Persons with Disabilities: Persons who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Funding/Awards: The total funding potentially available for this competitive opportunity is $8.4 million. The Office of Advocacy and Outreach (OAO) will award new grants from this announcement, subject to availability of funds and the quality of applications received. All applications will be considered new projects and applicants will compete based on their organization's entity type (*e.g.,* nonprofit organization, higher education institution), as described below. The maximum amount of requested federal funding for projects shall not exceed $200,000. Projects that are part of multi-year initiatives will only be funded for one year and will be eligible to compete for additional funding in subsequent years.

Funding will be awarded based on peer competition within the three categories described below along with the amount of funding OAO anticipates awarding to organizations within each category. OAO reserves the discretion to allocate funding between the three categories based upon the number and quality of applications received. There is no commitment by OAO to fund any particular application or to select a specific number of awardees within each category.

1. Category #1: Eligible entities described in Sections III.A.2, III.A.3, and III.A.4 (1890 Land Grant colleges and universities, 1994 Alaska Native and American Indian Tribal colleges and universities, and Hispanic-Serving colleges and universities).
2. Category #2: Eligible entities described in Sections III.A.1 and III.A.6 (*i.e.,* nonprofit organizations, community-based organizations, including a network or a coalition of community-based organizations, Indian tribes (as defined in 25 U.S.C. 450b), and national tribal organizations).
3. Category #3: Eligible entities described in Sections III.A.5 and III.A.7 (*i.e.,* all other institutions of higher education and other organizations or institutions, including those that received funding under this program before January 1, 1996).

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I. Funding Opportunity Description

A. Background

OAO is committed to ensuring that socially disadvantaged and veteran farmers and ranchers are able to equitably participate in USDA programs. Differences in demographics, culture, economics, and other factors preclude a single approach to identifying solutions that can benefit our underserved farmers and ranchers. Community-based and non-profit organizations, higher education institutions, and eligible tribal entities can play a critical role in addressing the unique difficulties they face and can help improve their ability to start and maintain successful agricultural businesses. With 2501 Program funding, organizations can extend our outreach efforts to connect with and assist socially disadvantaged and veteran farmers and ranchers and to provide them with information on available USDA resources.

1. The 2501 Program was authorized by the Food, Agriculture, Conservation, and Trade Act of 1990. The Food, Conservation, and Energy Act of 2008

expanded the authority of the Secretary of Agriculture (the Secretary) to provide awards under the program and transferred the administrative authority to OAO. The 2014 Farm Bill further expanded the program to include outreach and assistance to veterans. The 2501 Program extends USDA's capacity to work with members of farming and ranching communities by funding projects that enhance the equitable participation of socially disadvantaged and veteran farmers and ranchers in USDA programs. It is OAO's intention to build lasting relationships between USDA, awardee organizations, and socially disadvantaged and veteran farmers and ranchers.

2. Organizations may only submit one proposal for funding.

B. Scope of Work

The 2501 Program provides funding to eligible organizations for training and technical assistance projects designed to assist socially disadvantaged and veteran farmers and ranchers in owning and operating viable agricultural enterprises. Proposals must be consistent with requirements stated in 7 U.S.C. 2279(a)(2). Under this statute, "outreach and technical assistance shall be used exclusively:

(A) To enhance coordination of the outreach, technical assistance, and education efforts authorized under agriculture programs; and

(B) To assist the Secretary in:

(i) Reaching current and prospective socially disadvantaged farmers or ranchers and veteran farmers or ranchers in a linguistically appropriate manner; and

(ii) improving the participation of those farmers and ranchers in Department programs, as reported under section 2279–1 of this title".

Proposal applications from eligible entities must address two or more of the following priority areas:

1. Assist socially disadvantaged or veteran farmers and ranchers in owning and operating successful farms and ranches;

2. Improve participation among socially disadvantaged or veteran farmers and ranchers in USDA programs;

3. Build relationships between current and prospective farmers and ranchers who are either socially disadvantaged or veterans and USDA's local, state, regional, and National offices;

4. Introduce agriculture-related information to socially disadvantaged or veteran farmers and ranchers through innovative training and technical assistance techniques; and

5. Introduce agricultural education targeting socially disadvantaged youth and/or socially disadvantaged beginning farmers and workers, including but not limited to StrikeForce and Promise Zone areas.

To encourage information sharing and to build capacity among awardees, the OAO may require Project Directors to attend an annual training conference that can be expensed with awarded grant funds not to exceed $1,000 for up to two authorized grantee personnel. The conference will allow awardees to share ideas and lessons learned, provide training on performance and financial reporting requirements, and provide information on USDA programs and services. In addition, Project Directors will have an opportunity to make contacts and gather information on best practices.

C. Anticipated Outputs (Activities), Outcomes (Results), and Performance Measures

1. Outputs (Activities). The term "output" means an outreach, educational component or assistance activity, task, or associated work product related to improving the ability of socially disadvantaged and veteran farmers and ranchers to own and operate farms and ranches, assistance with agriculture related activities, or guidance for participation in USDA programs. Outputs may be quantitative or qualitative but must be measurable during the period of performance.

Examples of outputs from the projects to be funded under this announcement may describe an organization's activities and their participants such as: Number of workshops or meetings held and number of participants attending; frequency of services or training delivered, and to whom; and/or development of products, curriculum, or resources provided. Other examples include but are not limited to, the following:

a. Number of socially disadvantaged and veteran farmers or ranchers served;

b. number of conferences or training sessions held and number of socially disadvantaged and veteran farmers and ranchers who attended;

c. type and topic of educational materials distributed at outreach events;

d. creation of a program to enhance the operational viability of socially disadvantaged and veteran farmers and ranchers;

e. number of completed applications submitted for consideration for USDA programs; or

f. activity that supports increased participation of socially disadvantaged farmers and ranchers and veteran farmers and ranchers in USDA programs.

Creation of progress and final reports will be required, as specified in Section VI, Subsection D, "Reporting Requirement."

2. Outcomes (Results). The term "outcome" means the difference or effect that has occurred as a result from carrying out an activity, workshop, meeting, or from delivery of services related to a programmatic goal or objective. Outcomes refer to the final impact, change, or result that occurs as a direct result of the activities performed in accomplishing the objectives and goals of your project. Outcomes may refer to results that are agricultural, behavioral, social, or economic in nature. Outcomes may reflect an increase in knowledge or skills, a greater awareness of available resources or programs, or actions taken by stakeholders as a result of learning.

Project Directors will be required to document anticipated outcomes that are funded under this announcement which should include but are not limited to:

a. Increase in participation in USDA programs among socially disadvantaged and veteran farmers and ranchers;

b. increase in receptiveness of socially disadvantaged and veteran farmers and ranchers to outreach efforts through effective communication;

c. increase in economic stability of socially disadvantaged and veteran farmers and ranchers within a defined geographic area;

d. increase in community marketing and sales opportunities for the products of socially disadvantaged and veteran farmers and ranchers; or

e. increase use of resource conservation and sustainability practices among socially disadvantaged and veteran farmers and ranchers.

3. Performance Measures. Performance measures are tied to the goals or objectives of each activity and ultimately the overall purpose of the project. They provide insight into the effectiveness of proposed activities by indicating areas where a project may need adjustments to ensure success. Applicants must develop performance measure expectations which will occur as a result of their proposed activities. These expectations will be used as a mechanism to track the progress and success of a project. Project performance measures should include statements such as: Whether workshops or technical assistance will meet the needs of farmers or ranchers in the service area and why; how much time will be spent in group training or individual hands-on training of farmers and ranchers in the service area; or whether activities will

meet the demands of stakeholders. Project performance measures must include the assumptions used to make those estimates.

Consider the following questions when developing performance measurement statements:

- What is the measurable short-term and long-term impact the project will have on servicing or meeting the needs of stakeholders?
- How will the organization measure the effectiveness and efficiency of their proposed activities to meet their overall goals and objectives?

II. Award Information

A. Statutory Authority

The statutory authority for this action is 7 U.S.C. 2279, as amended, which authorizes award funding for projects designed to provide outreach and assistance to socially disadvantaged and veteran farmers and ranchers.

B. Expected Amount of Funding

The total estimated funding expected to be available for awards under this competitive opportunity is $8.4 million. Funding will be awarded based on peer competition within the three categories listed below. OAO reserves the discretion to allocate funding between the categories based upon the number and quality of applications received. There is no commitment by OAO to fund any particular application or to make a specific number of awards within each category.

1. Category #1: Eligible entities described in Sections III.A.2, III.A.3, and III.A.4 (1890 Land Grant colleges and universities, 1994 Alaska Native and American Indian Tribal colleges and universities, and Hispanic-Serving colleges and universities). OAO anticipates making awards totaling at least $2 million for Category #1 applicants.

2. Category #2: Eligible entities described in Sections III.A.1 and III.A.6 (*i.e.,* nonprofit organizations, community-based organizations, including a network or a coalition of community-based organizations, Indian tribes (as defined in 25 U.S.C. 450b), and National tribal organizations). OAO anticipates making awards totaling at least $2 million for Category #2 applicants.

3. Category #3: Eligible entities described in Sections III.A.5 and III.A.7 (*i.e.,* all other institutions of higher education and other organizations or institutions, including those that received funding under this program before January 1, 1996). OAO anticipates making awards totaling at least $1 million for Category #3 applicants.

C. Project Period

The performance period for projects selected from this solicitation will not begin prior to the effective award date and may not exceed *one* (1) year. Projects that are part of multi-year initiatives will only be funded for one year and will be eligible to compete for additional funding in subsequent years.

D. Award Type

Funding for selected projects will be in the form of a grant which must be fully executed no later than September 30, 2016. The anticipated Federal involvement will be limited to the following activities:

1. Approval of awardees' final budget and statement of work accompanying the grant agreement;
2. Monitoring of awardees' performance through quarterly and final financial and performance reports; and
3. Evaluation of awardees' use of federal funds through desk audits and on-site visits.

III. Eligibility Information

A. Eligible Entities

1. Any community-based organization, network, or coalition of community-based organizations that:

- Demonstrates experience in providing agricultural education or other agricultural-related services to socially disadvantaged and veteran farmers and ranchers;
- provides documentary evidence of work with, and on behalf of, socially disadvantaged and veteran farmers and ranchers during the 3-year period preceding the submission of a proposal for assistance under this program; and
- does not or has not engaged in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.

2. An 1890 or 1994 institution of higher education (as defined in 7 U.S.C. 7601).

3. An American Indian tribal community college or an Alaska Native cooperative college.

4. A Hispanic-Serving Institution of higher education (as defined in 7 U.S.C. 3103).

5. Any other institution of higher education (as defined in 20 U.S.C. 1001) that has demonstrated experience in providing agricultural education or other agricultural-related services to socially disadvantaged farmers and ranchers.

6. An Indian tribe (as defined in 25 U.S.C. 450b) or a National tribal organization that has demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers and ranchers.

7. All other organizations or institutions that received funding under this program before January 1, 1996, but only with respect to projects that the Secretary considers are similar to projects previously carried out by the entity under this program.

B. Cost-Sharing or Matching

Matching is not required for this program.

C. Threshold Eligibility Criteria

Applications from eligible entities that meet all criteria will be evaluated as follows:

1. Proposals must comply with the submission instructions and requirements set forth in Section IV of this announcement. Pages in excess of the page limitation will not be considered.

2. Proposals must be received through *www.grants.gov* as specified in Section IV of this announcement on or before the proposal submission deadline. Applicants will receive an electronic confirmation receipt of their proposal from *www.grants.gov.*

3. Proposals received after the submission deadline will not be considered. Please note that in order to submit proposals organizations must create accounts in *www.grants.gov* and in the System for Awards Management (*SAM.gov*); both of which could take up to 3 days or longer. Therefore, it is strongly suggested that organizations begin this process immediately. Registering early could prevent unforeseen delays in submitting your proposal.

4. Proposals must address a minimum of two or more of the priority areas that provide outreach and assistance to socially disadvantaged or veteran farmers and ranchers as stated in section I, subsection B, Scope of Work.

IV. Proposal and Submission Information

A. System for Award Management (SAM)

It is a requirement to register for SAM (*www.sam.gov*). There is NO fee to register for this site.

Per 2 CFR part 200, applicants are required to: (i) Be registered in SAM before submitting an application; (ii) provide a valid unique entity identifier in the application; and (iii) continue to maintain an active SAM registration with current information at all times during which the organization has an active Federal award or an application or plan under consideration by a Federal awarding agency. The OAO may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the OAO is ready to make a Federal award, OAO may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

SAM contains the publicly available data for all active exclusion records entered by the Federal government identifying those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. All applicant organizations and their key personnel will be vetted through *SAM.gov* to ensure they are in compliance with this requirement and not on the Excluded Parties List.

B. Obtain Proposal Package From www.grants.gov

Applicants may download individual grant proposal forms from *www.grants.gov.* For assistance with *www.grants.gov,* please consult the Applicant User Guide at (*http://grants.gov/assets/ApplicantUserGuide.pdf*).

Applicants are required to submit proposals through *www.grants.gov.* Applicants will be required to register through *www.grants.gov* in order to begin the proposal submission process. We strongly suggest you initiate this process immediately to avoid processing delays due to registration requirements.

Federal agencies post funding opportunities on *www.grants.gov.* The OAO is not responsible for submission issues associated with *www.grants.gov.* If you experience submission issues, please contact *www.grants.gov* support staff for assistance.

Proposals must be submitted by July 29, 2016, via *www.grants.gov* at 11:59 p.m. EST. Proposals received after this deadline *will not* be considered.

C. Content of Proposal Package Submission

All submissions must contain completed and electronically signed original application forms, as well as a Narrative Proposal, as described below:

1. Forms. The forms listed below can be found in the proposal package at *www.grants.gov.*

- Standard Form (SF) 424, Application for Federal Assistance;
- Standard Form (SF) 424A, Budget Information–Non-Construction Programs; and
- Standard Form (SF) 424B, Non-Construction Programs.
- Key Contacts Form
- Form AD–1047 Certification Regarding Debarment and Suspension
- Certification Regarding Lobbying
- Form AD–1049 Certification Regarding Drug-Free Workplace

2. Attachments. The elements listed below are required for all grant proposals and are included in the proposal package at *www.grants.gov* as fillable PDF templates. Applicants must download and complete these attachments and save the completed PDF files to the application submission portal at *www.grants.gov.* Attachment 1 will consist of the Project Summary Page and the Project Narrative. Attachment 2 will consist of the Budget Narrative. Attachment 3 will consist of Appendices. NOTE: Please number each page of each attachment and indicate the total number of pages per attachment (*i.e.,* 1 of 10, 2 of 10, etc.).

- *Attachment 1: Project Summary Page and Project Narrative.* The proposal must contain a Project Summary Page, which should not be numbered and must follow immediately after the SF Form 424, Application for Federal Assistance form. The Project Summary Page is limited to 250 words. It should be a synopsis or summary of the project's goals and objectives. It should be written as a CONCISE notice or advertisement about your organization, including its name; two or three sentences describing your project; the project's geographic service area; and the Project Director's name, email address, and telephone number. No points will be given or subtracted for the Project Summary Page. This will allow OAO to quickly glean pertinent information on the project. Organizations can expect that the Project Summary Page may be used in its entirety or in part for media purposes to include press releases, in informational emails to potential stakeholders or partners, to provide upper echelons of government with a snapshot of an organization, and for demographic purposes. Please do not restate the objectives of the 2501 Program (*i.e.* "to provide outreach and assistance for socially disadvantaged farmers and ranchers and veterans farmers and ranchers"); it should reflect the goal of your specific project.
- *Attachment 1: Project Narrative.* In *15 double-spaced pages or less,* using one-inch margins and 12-point font, indicate the organization that will conduct the project, the geographical area served by the project, and the priority areas that will be addressed by the project. Please be concise and note, members of the reviewing panel will not be required to review proposals of organizations which have deviated from these formatting specifications or have used alternative font sizes and margins.
  - ○ Discuss the merits of your proposed project. Specifically, proposals must: (1) Define and establish the existence of the needs of socially disadvantaged farmers and ranchers, veteran farmers and ranchers, or both in the defined geographic area; (2) identify the experience of the organization(s) taking part in the project; (3) identify the geographic area of service; and (4) discuss the potential impact of the project.
  - ○ Identify the qualifications, relevant experience, education, and publications of each Project Director or collaborator. Also, specifically address the work to be completed by key personnel and the roles and responsibilities within the scope of the proposed project. This includes past completed projects and financial management experiences.
  - ○ In an organized format, create a timeline for each task to be accomplished during the period of performance timeframe. Relate each task to one of the four priority areas in Section I, Subsection B. The timeline is part of the 15 page limit but can be as simple as a one-page description of tasks.
- *Attachment 2: Budget Narrative.* The Budget Narrative should identify and describe the costs associated with the proposed project, including sub-awards or contracts and indirect costs. An eligible entity that has never received a negotiated indirect cost rate may elect to charge a de minimis rate of 10 percent of modified total direct costs in accordance with 2 CFR 200.414(f). Organizations with previously approved indirect cost rates must submit their negotiated indirect cost rate agreement (NICRA) with this application in Attachment 3. Other funding sources may also be identified in this attachment. Each cost indicated must be reasonable, allocable, necessary and allowable under the Federal Cost Principles (2 CFR part 200, subpart E–Cost Principles) in order to be funded. The Budget Narrative should not exceed two pages and is *not* part of the Project Narrative.
- *Attachment 3: Appendices.* Organizations may submit Letters of Commitment, Letters of Support, or other supporting documentation which is encouraged but not required.

Applicants can consolidate all supplemental materials into one additional attachment. Do *not* include sections from other attachments as an Appendix.

Checklist of documents to submit through *www.grants.gov*:

1. SF–424 Application for Federal Assistance

Note: Ensure this is completed with accuracy; particularly email addresses and phone numbers. OAO may not be able to reach you if your information is incorrect.

2. Project Summary Page (no more than 250 words).

3. Project Narrative including a timeline (no more than 15 pages, 12 point font, and 1 inch margins only).

Note: To ensure fairness and uniformity for all applicants, Project Narratives not conforming to this stipulation may not be considered.

4. SF–424A Budget Information–Non-Construction Programs.

5. Budget Narrative (not to exceed 2 pages).

6. Key Contacts Form

Note: Please ensure these are completed with accuracy; individuals not on applicants' Key Contact Form will not receive information about or access to data that concerns the applicant organization.

7. Form AD–1047 Certification Regarding Debarment, Suspension and Other Responsibility Matters.

8. Certification Regarding Lobbying.

9. Form AD–1049 Certification Regarding Drug-Free Workplace Requirements (Grants).

10. Letters of Support, Letters of Recommendation, proof of 501(c)(3) status, résumés of key personnel, negotiated indirect cost rate agreements, etc.

Best practice notes:

* Only submit Adobe pdf file format documents to *www.grants.gov*.

* Name your documents with short titles to prevent issues with uploading/downloading documents from *www.grants.gov*. Documents with long names may not always upload/download properly.

* WHERE TO UPLOAD ATTACHMENTS ON YOUR APPLICATION: There are three blocks on the application where you may upload attachments: after block 14, after block 15, and after block 16. All attachments may be uploaded after each of these blocks on the tab that states: "Add Attachments."

D. Sub-Awards and Partnerships

Funding may be used to provide sub-awards, which includes using sub-awards to fund partnerships; however, the awardee must utilize at least 50 percent of the total funds awarded, and no more than three subcontracts will be permitted. All sub-awardees must comply with applicable requirements for sub-awards. Applicants must provide documentation of a competitive bidding process for services, contracts, and products, including consultant contracts, and conduct cost and price analyses to the extent required by applicable procurement regulations.

The OAO awards funds to *one eligible applicant* as the awardee. Please indicate a lead applicant as the responsible party if other organizations are named as partners or co-applicants or members of a coalition or consortium. The awardee is accountable to the OAO for the proper expenditure of all funds.

E. Submission Dates and Times

The closing date and time for receipt of proposal submissions is July 29, 2016, at 11:59 p.m., EST via *www.grants.gov*. Proposals received after the submission deadline will be considered late without further consideration. Proposals must be submitted through *www.grants.gov* without exception. Additionally, organizations must also be registered in the SAM (*www.sam.gov*). Creating an account for both Web sites can take several days to receive account verification and/or PIN numbers. Please allow sufficient time to complete access requirements for these Web sites. Proposal submission deadline is firm.

F. Confidential Information

In accordance with 2 CFR part 200, the names of entities submitting proposals, as well as proposal contents and evaluations, will be kept confidential to the extent permissible by law. If an applicant chooses to include confidential or proprietary information in the proposal, it will be treated in accordance with Exemption 4 of the Freedom of Information Act (FOIA). Exemption 4 of the FOIA protects trade secrets, and commercial and financial information obtained from a person that is privileged or confidential.

G. Pre-Submission Proposal Assistance

1. The OAO may not assist individual applicants by reviewing draft proposals or providing advice on how to respond to evaluation criteria. However, the OAO will respond to questions from individual applicants regarding eligibility criteria, administrative issues related to the submission of the proposal, and requests for clarification regarding the announcement. Any questions should be submitted to *OASDVFR2016@osec.usda.gov*.

2. The OAO will post questions and answers relating to this funding opportunity during its open period on the Frequently Asked Questions (FAQs) section of our Web site: *http://www.outreach.usda.gov/grants/*. The OAO will update the FAQs on a weekly basis and conduct webinars on an as-needed basis.

V. Application Review Information

A. Evaluation Criteria

Only eligible entities whose proposals meet the threshold criteria in Section III of this announcement will be reviewed according to the evaluation criteria set forth below. Applicants should explicitly and fully address these criteria as part of their proposal package. Each proposal will be reviewed under the regulations established under 2 CFR part 200.

A review panel that is independent of OAO will use a point system to rate each proposal, awarding a maximum of 100 points (95 points, plus an additional 5 discretionary points for programmatic priorities). Each proposal will be reviewed by at least two members of the Independent Review Panel who will review and score all applications submitted. The Independent Review Panel will numerically score and rank each application within the three categories and funding decisions will be based on their recommendations to the designated approving official. Final funding decisions will be made by the designated approving official.

B. Evaluation Criteria for New Grants Proposals

Criteria	Points
1. *Project Narrative:* Under this criterion, your proposal will be evaluated to the extent to which the narrative includes a well-conceived strategy for addressing the requirements and objectives stated in: Section I, Part B, Scope of Work, (see page 4, Project Narrative, for further clarification) identifying a minimum of two or more of the priority areas	45
In addition, the OAO may award up to five discretionary points (one point each) for the following Secretary priorities and initiatives:	5
• Projects assisting beginning farmers and ranchers (as defined in 7 U.S.C. 3319f);	

Criteria	Points
• Projects to assist StrikeForce states/communities as identified through the StrikeForce Initiative; • Projects that propose to assist with USDA's commitment to Tribal organizations with successful demonstration on implementation methods encompassing Tribal participation and buy-in; • Projects located in rural Promise Zones; • Projects with an emphasis on partnering with other USDA agencies, other Federal, state, and local entities, to maximize areas of coverage for outreach (i.e., research, small and beginning farmers, and feeding programs, etc.);	
2. *Programmatic Capability:* Under this criterion, applicants will be evaluated based on their ability to successfully complete and manage the proposed project taking into account the applicant's: Organizational experience, its staff's expertise and/or qualifications, and the organization's resources. The organization must also clearly document its historical successes and future plans to continue assisting socially disadvantaged and veteran farmers and ranchers	10
3. *Financial Management Experience:* Under this criterion, applicants will be evaluated based on their demonstrated ability to successfully complete and manage the proposed project taking into account the applicants' past performance in successfully completing and managing prior funding agreements identified, Section I, Part C, Performance Measures (see page 6). Past performance documentation on successfully completed projects may be at the Federal, state, or local community level. Per 2 CFR 200.205, if an applicant is a prior recipient of Federal awards, their record in managing that award will be reviewed, including timeliness of compliance with applicable reporting requirements and conformance to the terms and conditions of previous Federal awards	5
4. *Budget:* Under this criterion, proposed project budget will be evaluated to determine whether costs are reasonable, allowable, allocable and necessary to accomplish the proposed goals and objectives; and whether the proposed budget provides a detailed breakdown of the approximate funding used for each major activity. Additionally, indirect costs must be appropriately applied (see page 11). For a list of unallowable costs, please see 2 CFR part 200, subpart E	15
5. *Tracking and Measuring:* Under this criterion, the applicant's proposal will be evaluated based upon clearly documenting a detailed plan for tracking and measuring their progress toward achieving the expected project outputs and outcomes as stated in Section I, part C, Performance Measures (see pages 4 and 5). Applicants should indicate how they intend to clearly document the effectiveness of their project in achieving proposed thresholds or benchmarks in relation to stated goals and objectives. For example, state how your organization plans to connect socially disadvantaged and veteran farmers and ranchers with USDA agricultural programs. Applicants must clearly demonstrate how they will ensure timely and successful completion of the project with a reasonable time schedule for execution of the tasks associated with the projects	20

C. Selection of Reviewers

All applications will be reviewed by members of an Independent Review Panel. Panel members are selected based upon training and experience in relevant fields including outreach, technical assistance, cooperative extension services, civil rights, education, statistical and ethnographic data collection and analysis, and agricultural programs and are drawn from a diverse group of experts to create a balanced panel.

VI. Award Administration Information

A. Award Notices

Proposal Notifications and Feedback

1. The successful applicant will be notified by the OAO via telephone, email, or postal mail. The notification will advise the applicant that its proposed project has been evaluated and recommended for award. The notification will be sent to the *Project Manager* listed on the SF–424, Application for Federal Assistance. Project Managers should be the Authorized Organizational Representative (AOR) and authorized to sign on behalf of the organization. It is imperative that this individual is responsive to notifications by the OAO. If the individual is no longer in the position, please notify the OAO immediately to submit the new contact for the application. The award notice will be forwarded to the grantee for execution and must be returned to the OAO grants officer, who is the authorizing official. Once grant documents are executed by all parties, authorization to begin work will be given. At a minimum, this process can take up to 30 days from the date of notification.

2. The OAO will also send notification to unsuccessful applicants via email or postal mail. The notification will be sent to the *Project Manager* listed on the SF–424, Application for Federal Assistance. Project Managers should be the Authorized Organizational Representative (AOR).

3. Within ten days of award status notification, unsuccessful applicants may request feedback on their application. Feedback will be provided as expeditiously as possible. Feedback sessions will be scheduled contingent upon the number of requests. 7 CFR 2500.026.

B. Administrative and National Policy Requirements

All awards resulting from this solicitation will be administered in accordance with the Office and Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified at 2 CFR part 200, as supplemented by USDA implementing regulations at 2 CFR parts 400 and 415, and OAO Federal Financial Assistance Programs—General Award Administrative Procedures, 7 CFR part 2500.

In compliance with its obligations under Title VI of the Civil Rights Act of 1964 and Executive Order 13166, it is the policy of the OAO to provide timely and meaningful access for persons with Limited English Proficiency (LEP) to projects, programs, and activities administered by Federal grant recipients. Recipient organizations must comply with these obligations upon acceptance of grant agreements as written in OAO's Terms and Conditions. Following these guidelines is essential to the success of our mission to improve access to USDA programs for socially disadvantaged and veteran farmers and ranchers.

C. Data Universal Numbering System, System for Award Management, and Central Contractor Registry Registration

In accordance with the Federal Funding Accountability and Transparency Act (FFATA) and the USDA implementation, all applicants must obtain and provide an identifying number from Dun and Bradstreet's (D&B) Data Universal Numbering System (DUNS). Applicants can receive a DUNS number, at no cost, by calling the toll-free DUNS Number request line at 1–866–705–5711, or visiting the D&B Web site at *www.dnb.com.*

In addition, FFATA requires applicants to register with the Central Contractor Registry (CCR) and the

System for Award Management (SAM). *This registration must be maintained and updated annually.* Applicants can register or update their profile, at no cost, by visiting the SAM Web site at *www.sam.gov* which will satisfy both the CCR and SAM registration requirements. This is a requirement to register for *www.grants.gov.*

D. Reporting Requirement

In accordance with 2 CFR part 200, the following reporting requirements will apply to awards provided under this FOA. The OAO reserves the right to revise the schedule and format of reporting requirements as necessary in the award agreement.

1. Quarterly Progress Reports and Financial Reports will be required.

- *Quarterly Progress Reports.* The awardee must submit the OMB-approved Performance Progress Report form (SF–PPR, Approval Number: 0970–0334). For each report, the awardee must complete fields 1 through 12 of the SF–PPR. To complete field 10, the awardee is required to provide a detailed narrative of project performance and activities as an attachment, as described in the award agreement. Quarterly progress reports must be submitted to the designated OAO official within 30 days after the end of each calendar quarter.
- *Quarterly Financial Reports.* The awardee must submit the Standard Form 425, Federal Financial Report. For each report, the awardee *must complete both* the Federal Cash Transaction Report and the Financial Status Report sections of the SF–425. Quarterly financial reports must be submitted to the designated OAO official within 30 days after the end of each calendar quarter.

2. Final progress and financial reports will be required upon project completion. The final progress report should include a summary of the project or activity throughout the funding period, achievements of the project or activity, and a discussion of problems experienced in conducting the project or activity. The final financial report should consist of a complete SF–425 indicating the total costs of the project. Final progress and financial reports must be submitted to the designated OAO official within 90 days after the completion of the award period.

Signed this 20th day of June 2016.

Christian Obineme,

Associate Director, Office of Advocacy and Outreach.

[FR Doc. 2016–15124 Filed 6–24–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Submission for OMB Review; Comment Request

June 22, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 27, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Community Eligibility Provision Characteristics Study (CEP).

OMB Control Number: 0584–NEW.

Summary of Collection: Section 104(a) of the Healthy Hunger-Free Kids Act of 2010 (Pub. L. 111–296) amended section 11(a) (1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)(the law) to provide an alternative to household applications for free and reduced- price meals in high poverty local education agencies (LEAs) and schools. This alternative is referred to as the Community Eligibility Provision (CEP). In accordance with the law, CEP was phased in over a period of several years. CEP became available nationwide to all eligible LEAs and schools beginning July 1, 2014. The objective of the study is to examine operational issues and perceived incentives and barriers for adopting CEP as well as the impacts on National School Lunch Programs and School Breakfast Program participation and per meal revenues.

Need and Use of the Information: This study is necessary to implement section 28(a)(1) of the Richard B. Russell National School Lunch Act. This legislation directs the U.S. Department of Agriculture to carry out annual national performance assessments of the School Breakfast Program and the National School Lunch Programs. With the expansion of CEP nationwide, the CEP Characteristics Study will include surveys of nationally representative samples of participating and eligible non-participating LEAs to obtain updated information on the characteristics of participating and non-participating districts and schools. It will also examine CEP impacts on student participation and per meal revenue.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 1,029.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 1,621.

Food and Nutrition Service

Title: Special Nutrition Programs Quick Response Surveys.

OMB Control Number: 0584–NEW.

Summary of Collection: This is a new generic clearance that will allow the Food and Nutrition Service (FNS) to quickly collect and analyze specific information from State and local administrators of the Special Nutrition Programs (SNP), including the Special Supplemental Nutrition Program for Women, Infants, and Children, National School Lunch Program, School Breakfast Program, Summer Food Service Program, the Child and Adult Care Food Program, Fresh Fruit and Vegetable Program, Food Distribution on Indian Reservation, Commodity Supplemental Food Program, and the Emergency Food Assistance Program. Currently, FNS conducts lengthy, large, and complex studies on broad topics about each SNP, which often take several years to complete. The Quick Response Surveys will provide a new mechanism for succinct, quick-turnaround studies to complement the larger SNP studies. This generic clearance will enable FNS to administer the SNPs more effectively by providing a mechanism for rapidly collecting current information on specific time-sensitive features or issues. The surveys submitted under this generic clearance will be voluntary surveys.

Need and Use of the Information: The surveys submitted under this generic clearance will collect information from key administrators of the SNPs at the State, local, and site level in response to various program and research questions resulting from the larger and more complex SNP studies. The data collected from these quick turnaround studies will be used to answer policy and implementation questions posed by the larger studies and will enable FNS to monitor program funding, comply with statutes and regulations, and adopt program changes.

Please note that in the 60-day **Federal Register** Notice published on November 20, 2015, the estimated burden for this collection was calculated on an annual basis and did not include estimates for the three-year approval period. This notice reports the total burden hours for the three year approval.

Description of Respondents: Not-for profit institutions and State, Local, or Tribal Government.

Number of Respondents: 110,403.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 34,638.

Food and Nutrition Service

Title: Generic Clearance to Conduct Formative Research.

OMB Control Number: 0584–0524.

Summary of Collection: This information collection is based on section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1787), section 5 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1754) and section 11(f) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020). This information collection will conduct research in support of FNS' goal of delivering science-based nutrition education to targeted audiences. From development through testing of materials and tools with the target audience, FNS plans to conduct data collections that involve formative research including focus groups, interviews (dyad, triad, telephone, *etc.*), surveys and Web-based collection tools.

Need and Use of the Information: Obtaining formative input and feedback is fundamental to FNS' success in delivering science- based nutrition messages and reaching diverse segments of the population in ways that are meaningful and relevant. This includes conferring with the target audience, individuals who serve the target audience, and key stakeholders on the communication strategies and interventions that will be developed and on the delivery approaches that will be used to reach consumers. The formative research and testing activities described will help in the development of effective education and promotion tools and communication strategies. Collection of this information will increase FNS' ability to formulate nutrition education interventions that resonate with the intended target population, in particular low-income families.

Description of Respondents: Individuals or households; Not for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 113,775.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 43,803.

Food and Nutrition Service

Title: Food Program Reporting System (FPRS).

OMB Control Number: 0584–0594.

Summary of Collection: The Food and Nutrition Service (FNS) is consolidating certain programmatic and financial data reporting requirements under the Food Programs Reporting System (FPRS), an electronic reporting system. The purpose is to give State agencies and Indian Tribal Organization (ITO) agencies one portal for the various reporting required for the programs that the State and ITO agencies operate.

Need and Use of the Information: The data collected will be used for a variety of purposes, mainly program evaluation, planning, audits, funding, research, regulatory compliance and general statistics. The data is gathered at various times, ranging from monthly, quarterly, annual or final submissions. Without the information, FNS would be unable to meet its legislative and regulatory reporting requirements for the affected programs.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 5,095.

Frequency of Responses: Reporting: Quarterly, Semi-annually, Monthly; Annually.

Total Burden Hours: 104,556.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–15089 Filed 6–24–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act

AGENCY: Siuslaw National Forest, Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Siuslaw National Forest is proposing to charge new fees at five recreation sites. Sites are undergoing new construction or amenities are being added to improve visitor services and experiences. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment, and public comment. Fee receipts would be used for the operation and maintenance of these recreation sites.

Castle Rock and Rocky Bend campgrounds will be converted to group campgrounds offering a new opportunity for the public and available to reserve at $75/night. Major reconstruction of the historic Hebo Kitchen, a day use picnic shelter, at Hebo Lake is planned this year and would be available for groups to reserve at $50/day. A $5 day use fee at South Lake/Pioneer Indian Trailhead would be added and recreation passes honored. This site will have new interpretive materials and picnic tables as well as trash service. A $5 day use fee or recreation pass would also be honored at the new Cascade Head interpretive site along the Salmon River estuary within Cascade Head Scenic Research Area. This site is currently under construction and will be completed later this year.

People are invited to comment on this proposal.

DATES: Comments on the proposal will be accepted through September 15, 2016. New fees would begin after January 2017.

ADDRESSES: Jeremiah C. Ingersoll, Forest Supervisor, Siuslaw National Forest, 3200 SW Jefferson Way, Corvallis, OR 97333.

FOR FURTHER INFORMATION CONTACT: Dani Pavoni, Recreation Staff Officer, 541–750–7046 or email *SiuslawRecFee@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

Once public involvement is complete, these new fees will be reviewed and a recommendation made by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Visitors wanting to reserve Castle Rock, Rocky Bend or Hebo Kitchen group sites would need to do so through the national reservation system at *www.recreation.gov* or by calling 1–877–444–6777 when it becomes available.

Dated: June 17, 2016.

Jeremiah C. Ingersoll,

Forest Supervisor.

[FR Doc. 2016–15156 Filed 6–24–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to re-establish the Black Hills National Forest Advisory Board.

SUMMARY: The U. S. Department of Agriculture (USDA), intends to re-establish the Black Hills National Forest Advisory Board (Board). In accordance with the provisions of the Federal Advisory Committee Act (FACA), the Board is being re-established to continue obtaining advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments, forest health including fire management and mountain pine beetle infestations, travel management, forest monitoring and evaluation, recreation fees, and site-specific projects having forest wide implications.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Board Coordinator, USDA, Black Hills National Forest, by telephone: 605–673–9216, by fax: 605–673–9208, or by email: *sjjacobson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Board is a non-scientific program advisory board established by the Secretary of Agriculture in 2003 to provide advice and counsel to the U. S. Forest Service, Black Hills National Forest, in the wake of increasingly severe and intense wild fires and mountain pine beetle epidemics.

The purpose of the Board is to provide advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments, travel management, forest monitoring and evaluation, and site-specific projects having forest-wide implications. The Board also serves to meet the needs of the Recreation Enhancement Act of 2005 as a Recreation Resource Advisory Committee (RRAC) for the Black Hills of South Dakota. The Board provides timely advice and recommendations to the regional forester through the forest supervisor regarding programmatic forest issues and project-level issues that have forest-wide implications for the Black Hills National Forest.

The Board meets approximately ten times a year, with one month being a field trip, held in August and focusing on both current issues and the educational value of seeing management strategies and outcomes on the ground. This Board has been established as a truly credible entity and a trusted voice on forest management issues and is doing often astonishing work in helping to develop informed consent for forest management.

For years, the demands made on the Black Hills National Forest have resulted in conflicts among interest groups resulting in both forest-wide and site-specific programs being delayed due to appeals and litigation. The Board provides a forum to resolve these issues to allow for the Black Hills National Forest to move forward in its management activities. The Board is believed to be one of the few groups with broad enough scope to address all of the issues and include all of the jurisdictional boundaries.

Significant Contributions

The Board's most significant accomplishments include:

1. A 2004 report on the Black Hills Fuels Reduction Plan, a priority following the major fires including the 86,000 acre Jasper Fire in 2000;
2. A 2004 initial Off-Highway Vehicle Travel Management Subcommittee report;
3. A report on their findings regarding the thesis, direction, and assumptions of Phase II of our Forest Plan produced in 2005;
4. The Invasive Species Subcommittee Report in 2005 covering recommendations to better stop invasive species from infiltrating the Forest;
5. A final Travel Management Subcommittee Report in 2006 in which the Board made 11 recommendations regarding characteristics of a designated motor vehicle trail system, the basis for our initial work to prepare our Motor Vehicle Use Map in 2010–2011;
6. The Board's annual work to attract funding through grants based on the Collaborative Landscape Forest Restoration Program (CFLRP), a program of the Secretary of Agriculture *CFLR* Program to encourage the collaborative, science-based ecosystem restoration of priority forest landscapes;
7. A letter to the Secretary and the Chief of the Forest Service to work, restore and maintain open space for wildlife habitat and recreation needs like snowmobile trails; and
8. The annual reports to the Secretary detailing the Board's activities, issues, and accomplishments.

The Board is deemed to be among the most effective public involvement strategies in the Forest Service and continues to lead by example for Federal, State, and local government agencies working to coordinate and cooperate in the Black Hills of South Dakota and Wyoming.

Background

Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), the Secretary of Agriculture intends to re-establish the Black Hills National Forest Advisory Board. The Board provides advice and recommendations on a broad range of forest planning issues and, in accordance with the Federal Lands Recreation Enhancement Act (Pub. L. 108–447 (REA)), more specifically will provide advice and recommendations on Black Hills National Forest recreation fee issues (serving as the RRAC for the Black Hills National Forest). The Board membership consists of individuals representing commodity interests, amenity interests, and State and local government.

The Board has been determined to be in the public interest in connection with the duties and responsibilities of the Black Hills National Forest. National forest management requires improved coordination among the interests and governmental entities responsible for land management decisions and the public that the agency serves.

Advisory Committee Organization

The Board consists of 16 members that are representative of the following interests (this membership is similar to the membership outlined by the Secure Rural Schools and Community Self Determination Act for Resource Advisory Committees (16 U.S.C. 500, *et seq.*)):

1. Economic development;
2. Developed outdoor recreation, off-highway vehicle users, or commercial recreation;
3. Energy and mineral development;
4. Commercial timber industry;

5. Permittee (grazing or other land use within the Black Hills area);
6. Nationally recognized environmental organizations;
7. Regionally or locally recognized environmental organizations;
8. Dispersed recreation;
9. Archeology or history;
10. Nationally or regionally recognized sportsmen's groups, such as anglers or hunters;
11. South Dakota State-elected offices;
12. Wyoming State-elected offices;
13. South Dakota or Wyoming county- or local-elected officials;
14. Tribal government elected or-appointed officials;
15. South Dakota State natural resource agency official; and
16. Wyoming State natural resource agency official.

The members of the Board will elect and determine the responsibilities of the Chairperson and the Vice-Chairperson. In the absence of the Chairperson, the Vice-Chairperson will act in the Chairperson's stead. The Forest Supervisor of the Black Hills National Forest serves as the Designated Federal Officer (DFO) under sections 10(e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App. II).

Members will serve without compensation, but may be reimbursed for travel expenses while performing duties on behalf of the Board, subject to approval by the DFO.

Equal opportunity practices are followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have been taken into account the needs of diverse groups served by USDA, the membership shall include to the extent practicable, individuals with demonstrated ability to represent the needs of all racial and ethnic groups, women and men, and persons with disabilities.

Dated: June 20, 2016.

Gregory L. Parham,

Assistant Secretary for Administration.

[FR Doc. 2016–15127 Filed 6–24–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Four Forest Restoration Initiative, Rim Country Apache-Sitgreaves, Coconino, and Tonto National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Apache-Sitgreaves, Coconino, and Tonto National Forests are proposing to conduct restoration activities within 1.24 million acres of ponderosa pine ecosystem over approximately 10 years. Treatment areas are located on the Black Mesa, and Lakeside Ranger Districts of the Apache-Sitgreaves National Forest, the Mogollon and Red Rock Ranger Districts of the Coconino National Forest, and the Payson and Pleasant Valley Ranger Districts of the Tonto National Forest. Project treatments would occur in the vicinity of Happy Jack, Payson, Young, Heber-Overgaard, Show Low, and Pinetop-Lakeside, Arizona. The objective of this project is to re-establish forest structure, pattern, and composition, which will lead to increased forest resilience and function. Resiliency increases the ability of ponderosa pine forests to survive natural disturbances such as insects and disease, fire, and climate change.

DATES: Comments concerning the proposed action in this notice must be received by August 11, 2016. The draft environmental impact statement is expected in July 2017 and the final environmental impact statement is expected in September 2018.

ADDRESSES: Send written comments to Coconino National Forest, Attention: 4FRI, 1824 S. Thompson Street, Flagstaff, Arizona 86001. Comments may also be sent via email to *4FRI_comments@fs.fed.us,* or via facsimile to (928) 527–3620.

FOR FURTHER INFORMATION CONTACT: Annette Fredette, 4FRI Planning Coordinator, at 928–226–4684, or *4FRI_comments@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose of and Need for Action

The purpose of the Rim Country Project is to reestablish and restore forest structure and pattern, forest health, and vegetation composition and diversity in ponderosa pine ecosystems to conditions within the natural range of variation, thus moving the project area toward the desired conditions. The outcome of improving structure and function is increased system resiliency. Resiliency increases the ability of an ecosystem to survive natural disturbances such as fire, insects and disease, and climate change without changing its inherent function.

This project is needed to: Increase forest resiliency and sustainability, reduce risk of undesirable fire effects, improve terrestrial and aquatic species habitat, improve the condition and function of streams and springs, restore woody riparian vegetation, preserve cultural resources, and support sustainable forest products industries.

Proposed Action

To meet the purpose and need for the Rim Country Project and move the project area toward desired conditions, the Apache-Sitgreaves, Coconino, and Tonto National Forests propose mechanical thinning, prescribed fire, and other restoration activities throughout the project area that would make the forest more resilient to natural disturbances such as fire, insects and disease, and climate change. Restoration activities are needed to maintain or restore forest structure and pattern, desired fire regimes, and watershed and ecosystem function in ponderosa pine, ponderosa pine-Gambel oak, ponderosa pine-evergreen oak, frequent fire mixed conifer (dry mixed conifer), aspen, and grassland cover types, moving them toward conditions within the natural range of variation. Facilitative operations may be needed in other cover types (such as pinyon juniper) to enable or complete treatments in target cover types, by reducing uncharacteristic fire risk, reducing ground disturbance from fireline construction, or improving operability. Restoration activities proposed for the Rim Country project area include:

- Mechanically thin trees and/or implement prescribed fire on approximately 952,330 acres.
  - Mechanically thin trees and implement prescribed fire on approximately 1,260 acres in the Long Valley Experimental Forest (in coordination with the Rocky Mountain Research Station).
  - Implement prescribed fire alone on approximately 45,290 acres.
  - Mechanically thin and/or implement prescribed fire on approximately 68,360 acres of Mexican spotted owl (MSO) protected activity centers (PACs), approximately 128,800 acres of MSO recovery habitat, and approximately 500,940 acres of northern goshawk habitat.
  - Mechanically thin trees and/or implement prescribed fire to restore approximately 40,760 acres of grasslands and meadows (includes 21,550 acres of grassland cover type).
  - Conduct facilitative operations (thin and/or burn) on up to 157,270 acres of non-target cover types to support treatments in target cover types.

- ○ Planting, burning, and other activities to encourage reforestation on approximately 69,360 acres of understocked areas that were previously forested.
- Decommission approximately 230 miles of existing system and unauthorized roads on the Coconino and Apache-Sitgreaves NFs.
- Decommission approximately 20 miles of unauthorized roads on the Tonto NF.
- Improve approximately 150 miles of existing non-system roads and construct approximately 350 miles of temporary roads for haul access; decommission when treatments are completed.
- Relocate and reconstruct existing open roads adversely affecting water quality and natural resources, or of concern to human safety.
- Restore hydrologic function and vegetation on approximately 9,570 acres of meadows.
- Restore approximately 184 springs.
- Restore function in up to 470 miles of riparian streams and intermittent and ephemeral stream channels (non-riparian).
- Restore up to 360 miles of stream habitat for threatened, endangered, and sensitive aquatic species.
- Construct up to 200 miles of protective barriers around springs, aspen, Bebb's willows, and big-tooth maples, as needed for restoration.

Possible Alternatives

A full range of alternatives to the proposed action, including a no action alternative, will be considered. The no action alternative represents no change and serves as the baseline for the comparison of the action alternatives.

Forest Plan Amendments

To meet the project's purpose and need, the existing Coconino and Tonto Forest Plans would need to be amended to provide for areas of grass, forbs, and shrubs interspersed with tree groups and allow for treatments to move tree group patterns, interspaces, and stand density toward the natural range of variability. Amending these forest plans would allow for treatments that improve MSO nesting and roosting habitat as defined in the Mexican spotted owl recovery plan. The desired conditions related in the project's purpose and need are consistent with the revised Apache-Sitgreaves Forest Plan. Amendments to the Coconino and Tonto Forest Plans would provide consistency in meeting desired conditions for ponderosa pine and mixed conifer forests across the Rim Country project area.

Lead and Cooperating Agencies

Cooperating Agency status has been designated to the Arizona Game and Fish Department (Department) to assist the Apache-Sitgreaves, Tonto, and Coconino National Forests in the preparation of the 4FRI Rim Country EIS, pursuant to the terms the Master Memorandum of Understanding (10–MU–11031600–019) between the Department and the Forest Service.

Responsible Official

The responsible officials are the Apache-Sitgreaves, Coconino, and Tonto National Forest Supervisors.

Nature of Decision To Be Made

Given the purpose and need of the project, the forest supervisors will review the proposed action, other alternatives, and the environmental effects analysis in order to determine: (1) Which alternative, or combination of alternatives, should be implemented; (2) the location and treatment methods for all restoration activities; (3) the design features, mitigation measures and monitoring requirements; and, (4) consistency with the forest plans in place at the time of the decision and the need for amendments.

Scoping Process

This notice of intent initiates the scoping process for the 4FRI Rim Country Project, which guides the development of the environmental impact statement. Public meetings are planned during the scoping period for the purposes of discussing and gathering comments on the proposed action. Meetings are planned on Thursday, July 14 in Show Low, AZ, and on Thursday, July 21 in Payson, AZ. For times and locations and other scheduled meetings, please visit the 4FRI Web site: *http://www.fs.usda.gov/goto/4FRIRimCountry*. Please contact Annette Fredette at (928) 226–4684 for additional information.

The intent of this comment period is to provide those interested in or affected by this proposed action with an opportunity to make their concerns known. Written, hand-delivered, electronic, and facsimile comments concerning this proposed action will be accepted. We invite you to provide any substantive comments you might have regarding the proposed action for the 4FRI Rim Country Project, those that are within the scope of the project and the decision to be made, are specific to the proposed activities and the project area, and have a direct relationship to the project. Please provide supporting reasons for us to consider. If you cite or include references with your comments, you need to state specifically how those references relate to the proposed action. Please include hard copies or internet links to any references to which you refer. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

This proposed project is an action implementing three land management plans and is subject to the objection process described in 36 CFR 218 Subparts A and B. As such, individuals and organizations wishing to be eligible to file a predecisional objection must meet the information requirements in 36 CFR 218. Names and contact information submitted with comments will become part of the public record and may be released under the Freedom of Information Act. However, comments submitted anonymously will also be accepted and considered.

Dated: June 20, 2016.

Scott Russell,

4FRI Chief Executive.

[FR Doc. 2016–15104 Filed 6–24–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority; First Responder Network Authority Board Meetings

AGENCY: First Responder Network Authority, U.S. Department of Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Board of the First Responder Network Authority (FirstNet) will convene an open public meeting on June 30, 2016, preceded by open public meetings of the Board Committees on June 29, 2016.

DATES: On June 29, 2016 between 1 p.m. and 3:30 p.m. CST, there will be an open public joint meeting of the FirstNet Governance and Personnel, Finance, Technology, and Consultation and Outreach Committees. The full FirstNet Board will hold an open public meeting on June 30, 2016 between 8:30 a.m. and 12 p.m. CST.

ADDRESSES: The meetings on June 29–30, 2016, will be held at W Chicago—City Center, 172 West Adams Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Karen Miller-Kuwana, Board Secretary, FirstNet, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; telephone: (571) 665–6177; email: *karen.miller-kuwana@firstnet.gov.* Please direct media inquiries to Ryan Oremland at (571) 665–6186.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Board of FirstNet will convene an open public meeting on June 30, 2016, preceded by open public meetings of the Board Committees on June 29, 2016.

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (the "Act") established FirstNet as an independent authority within the National Telecommunications and Information Administration that is headed by a Board. The Act directs FirstNet to ensure the building, deployment, and operation of a nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. The FirstNet Board held its first public meeting on September 25, 2012.

Matters to be Considered: FirstNet will post detailed agendas of each meeting on its Web site, *http://www.firstnet.gov,* prior to the meetings. The agenda topics are subject to change. Please note that the subjects that will be discussed by the Committees and the Board may involve commercial or financial information that is privileged or confidential, personnel matters, or other legal matters affecting FirstNet. As such, the Committee chairs and Board Chair may call for a vote to close the meetings only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Times and Dates of Meetings: On June 29, 2016 between 1 p.m. and 3:30 p.m. CST, there will be an open public joint meeting of the Governance and Personnel, Finance, Technology, and Consultation and Outreach Committees. The full FirstNet Board will hold an open public meeting on June 30, 2016 between 8:30 a.m. and 12 p.m. CST.

Place: The meetings on June 29–30, 2016 will be held at W Chicago—City Center, 172 West Adams Street, Chicago, IL 60603.

Other Information: These meetings are open to the public and press on a first-come, first-served basis. Space is limited. In order to get an accurate headcount, all expected attendees are asked to provide notice of intent to attend by sending an email to *BoardRSVP@firstnet.gov.* If the number of RSVPs indicates that expected attendance has reached capacity, FirstNet will respond to all subsequent notices indicating that capacity has been reached and that in-person viewing may no longer be available but that the meeting may still be viewed by webcast as detailed below. For access to the meetings, valid government issued photo identification may be requested for security reasons.

The meetings are accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Monica Welham, Executive Assistant, FirstNet, at (571) 665–6144 or *monica.welham@firstnet.gov,* at least five (5) business days before the applicable meeting(s).

The meetings will also be webcast. Please refer to FirstNet's Web site at *www.firstnet.gov* for webcast instructions and other information. Viewers experiencing any issues with the live webcast may email *support@sparkstreetdigital.com* or call 202–684–3361 x9 for support. A variety of automated troubleshooting tests are also available via the "Troubleshooting Tips" button on the webcast player. The meetings will also be available to interested parties by phone. To be connected to the meetings in listen-only mode by telephone, please dial 800–857–9642 and passcode 2162310.

Records: FirstNet maintains records of all Board proceedings. Minutes of the Board Meeting and the Committee meetings will be available at *www.firstnet.gov.*

Dated: June 21, 2016.

Karen Miller-Kuwana,

Board Secretary, First Responder Network Authority.

[FR Doc. 2016–15158 Filed 6–24–16; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before July 18, 2016. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 15–052. *Applicant:* Iowa State University of Science and Technology, 211 TASF, Ames, IA 50011–3020. *Instrument:* Electron Microscope. *Manufacturer:* FEI, Co., Czech Republic and Great Britain. *Intended Use:* The instrument will be used to perform microstructure examination, compositional analysis and orientation analysis on materials such as metals, compounds, alloys, oxides and organic materials. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* April 13, 2016.

Docket Number: 16–007. *Applicant:* University of California, Riverside, 900 University Ave., Riverside, CA 92521. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument will be used to characterize the morphology and structure at microscopic down to atomic scale of materials and biological tissues. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* May 9, 2016.

Dated: June 21, 2016.

Gregory W. Campbell,

Director of Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2016–15139 Filed 6–24–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–043]

Countervailing Duty Investigation of Stainless Steel Sheet and Strip From the People's Republic of China: Preliminary Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 12, 2016, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of stainless steel sheet and strip (stainless sheet and strip) from the People's Republic of China (PRC).[1] On May 6, 2016, the Department received timely allegations that critical circumstances exist with respect to imports of the merchandise under investigation.[2] Based on information provided by Petitioners, data placed on the record of this investigation by the mandatory respondent, and data collected by the Department, the Department preliminarily determines that critical circumstances exist for imports of stainless sheet and strip from the PRC.

DATES: Effective on June 27, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Halle, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0176.

SUPPLEMENTARY INFORMATION:

Background

Section 703(e)(1) of the Tariff Act of 1930, as amended (the Act), provides that the Department will preliminarily determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) That "the alleged countervailable subsidy" is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization, and (B) that there have been massive imports of the subject merchandise over a relatively short period. Section 19 CFR 351.206 provides that imports must increase by at least 15 percent during the "relatively short period" to be considered "massive" and defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.[3] The regulations also provide, however, that, if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.[4]

On March 25, 2016, the Department selected Ningbo Baoxin Stainless Steel Co., Ltd. (Ningbo Baoxin) and Shanxi Taigang Stainless Steel Co. Ltd. (Taigang) as mandatory respondents.[5] Since Ningbo Baoxin has not participated in this proceeding, we selected Daming International Import Export Co Ltd (Daming) as an additional mandatory respondent on May 5, 2016.[6] Daming has not participated in this proceeding.

Alleged Countervailable Subsidies Are Inconsistent With the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, the Department considered the evidence currently on the record of this investigation. Specifically, as determined in our initiation checklist, the following subsidy programs, alleged in the Petition and supported by information reasonably available to Petitioners, appear to be either export contingent or contingent upon the use of domestic goods over imported goods, which would render them inconsistent with the SCM Agreement: Preferential Lending to Stainless Sheet and Strip Producers and Exporters Classified As "Honorable Enterprises,"[7] Export Loans,[8] Export Credit Guarantees,[9] Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment,[10] Subsidies for Development of Famous Brands and China World Top Brands,[11] and Export Assistance Grants.[12] Therefore, the Department preliminarily determines that there are alleged subsidies in this CVD investigation that are inconsistent with the SCM Agreement.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to sections 703(e)(1)(B) and 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

Petitioners did not provide any argument or evidence pursuant to CFR 351.206(i), that importers, exporters or producers had a reason to believe, at some time prior to the filing of the petition, that a proceeding was likely. Thus, in order to determine whether there has been a massive surge in imports for the cooperating mandatory respondent, we have used a comparison period starting with the month the petition was filed in (*i.e.*, February 2016), up to the most recent month we have shipping data for on the record (*i.e.*, April 2016). We then selected a base period with the same number of months, starting in the month prior to the filing of the petition (*i.e.*, November 2015 through January 2016). Based on this analysis, we preliminarily determine that Taigang had massive imports.[13]

For "all other" exporters or producers, the Department compared Global Trade Atlas (GTA) data for the period February through April (the last month for which GTA data is currently available) with the proceeding three-month period of November 2015 through January 2016.[14] We then subtracted shipments reported by the cooperating mandatory respondent from the GTA data. Based on this analysis, we preliminarily determine that "all other" exporters or producers had massive imports.[15]

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[1] *See* Stainless Steel Sheet and Strip From the People's Republic of China—Petitions for the Imposition of Antidumping and Countervailing Duties," February 12, 2016 (Petition). The petitioners for these investigations are AK Steel Corporation, Allegheny Ludlum, LLC d/b/a ATI Flat Rolled Products, North American Stainless, and Outokumpu Stainless USA, LLC (collectively, Petitioners).

[2] *See* Letter from Petitioners, "Antidumping and Countervailing Duty Investigations of Stainless Steel Sheet and Strip from the People's Republic of China—Petitioners Allegation of Critical Circumstances," May 6, 2016 (Critical Circumstances Allegation).

[3] *See* 19 CFR 351.206(i).

[4] *Id.*

[5] *See* Memorandum, "Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Respondent Selection," March 25, 2016.

[6] *See* Memorandum, "Countervailing Duty Investigation of Stainless Steel Sheet and Strip From the People's Republic of China: Second Analysis Regarding Respondent Selection," May 5, 2016.

[7] *See* PRC CVD Initiation Checklist, March 3, 2016, at 9.

[8] *Id.*, at 10.

[9] *Id.*, at 12.

[10] *Id.*, at 21.

[11] *Id.*, at 32.

[12] *Id.*, at 36.

[13] *See* Memorandum, "Monthly Shipment Quantity and Value Analysis for Critical Circumstances Preliminary Determination," June 20, 2016.

[14] The Department gathered GTA data under the following harmonized tariff schedule numbers: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.13.0081, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.23.0030, 7219.23.0060, 7219.24.0030, 7219.24.0060, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.32.0045, 7219.32.0060, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.33.0045, 7219.33.0070, 7219.33.0080, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.34.0050, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.35.0050, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080,

Because we do not have verifiable shipment data from the non-cooperating mandatory respondents (*i.e.,* those mandatory respondents that did not respond to the initial questionnaire or who otherwise indicated their unwillingness to participate in the investigation), we determined, on the basis of adverse facts available,[16] that there has been a massive surge in imports. Accordingly, we preliminarily determine that the following producers/exporters had massive surges in imports: Ningbo Baoxin, and Daming.[17]

Conclusion

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of stainless sheet and strip shipped by Taigang, Ningbo Baoxin, Daming, and "all other" exporters or producers.

Final Critical Circumstances Determination

We will issue a final determination concerning critical circumstances when we issue our final subsidy determination. All interested parties will have the opportunity to address this determination in case briefs to be submitted after completion of the preliminary CVD determination.

ITC Notification

In accordance with sections 703(f) and 733(f) of the Act, we will notify the ITC of our determination.

Suspension of Liquidation

In accordance with sections 703(e)(2), because we have preliminarily found that critical circumstances exist with regard to imports exported by certain producers and exporters, if we make an affirmative preliminary determination that countervailable subsidies have been provided to these same producers/exporters at above *de minimis* rates,[18] we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of "provisional measures" (*e.g.,* the date of publication in the **Federal Register** of the notice of an affirmative preliminary determination that countervailable subsidies have been provided at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary subsidy rates reflected in the preliminary determination published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.206(c)(2).

Dated: June 20, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–15132 Filed 6–24–16; 8:45 am]

BILLING CODE 3510–DS–P

7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080.

[15] *Id.*

[16] *See* Section 776 of the Act.

[17] *See* Memorandum, "Monthly Shipment Quantity and Value Analysis for Critical Circumstances Preliminary Determination," dated concurrently with this **Federal Register** notice.

[18] The preliminary determinations concerning the provision of countervailable subsidies is currently scheduled for July 11, 2016.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Amended Final Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is amending the *Final Results*[1] of the administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico to correct ministerial errors. The period of review ("POR") is October 1, 2013, through September 30, 2014.

DATES: *Effective Date:* June 27, 2016.

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone 202–482–3965.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2016, the Department disclosed to interested parties its calculations for the *Final Results.*[2] On May 23, 2015, we received ministerial error allegations from Nucor Corporation[3] and Deacero S.A.P.I de C.V. and Deacero USA ("Deacero") regarding the Department's final margin calculations.[4]

Period of Review

The POR covered by this review is October 1, 2013, through September 30, 2014.

Scope of the Order

The merchandise subject to this order is carbon and certain alloy steel wire rod. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059. Although the HTS numbers are provided for convenience and customs purposes, the written product description remains dispositive.[5]

Ministerial Errors

Section 751(h) of the Tariff Act of 1930, as amended ("the Act"), defines a "ministerial error" as including "errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other unintentional error which the administering authority considers ministerial." We analyzed Nucor's and Deacero's ministerial error comments and determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that there were ministerial errors in our calculation of Deacero's margin for the *Final Results.* For a complete discussion of these allegations, *see* the Department's Ministerial Errors Memorandum.[6]

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[1] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review; 2013–2014* 81 FR 31,592 (May 19, 2016) ("*Final Results*").

[2] *See* Memorandum, "Calculation Memorandum for Daecero S.A. de C.V. and Deacero USA, INC. (collectively, Deacero)" dated May 6, 2015.

[3] Nucor Corporation ("Nucor") is a domestic interested party.

[4] *See* Letter from Nucor, "Eighth (12/13) Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Mexico—Petitioner's Comments on a Ministerial Error in Final Results" dated May 18, 2015; and Letter from Deacero "Carbon and Certain Alloy Steel Wire Rod from Mexico: Ministerial Error Comments" dated May 18, 2015.

[5] For a complete description of the scope of the order, *see* "Carbon and Certain Alloy Steel Wire Rod from Mexico: Issues and Decision Memorandum for the Final Results of the Antidumping Administrative Review; 2012–2013" dated May 6, 2015 ("Issues and Decision Memorandum").

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results.*[7] The revised weighted-average dumping margin is detailed below.

Amended Final Results

As a result of correcting for these ministerial errors, we determine the following margin exists for the period October 1, 2012, through September 30, 2013.

Manufacturer/exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I. de C.V. and Deacero USA, Inc. (collectively, Deacero).	1.13 *ad valorem.*

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. The Department intends to issue assessment instructions to CBP 41 days after the date of publication of these amended final results of review.

For assessment purposes, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

We calculated such rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. If an importer-specific assessment rate is zero or *de minimis* (*i.e.,* less than 0.50 percent) or the exporter has a weighted-average dumping margin that is zero or *de minimis,* the Department will instruct CBP to assess that importer's entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2).

For entries of subject merchandise during the POR produced by a respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this assessment practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of amended final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the amended final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Deacero will be the rate established in the amended final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 20.11 percent, the all-others rate established in the investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent increase in antidumping duties by the amount of antidumping duties reimbursed.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Disclosure

We will disclose the calculations performed for these amended final results to interested parties within five business days of the date of publication of this notice in accordance with 19 CFR 351.224(b)

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: June 21, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–15130 Filed 6–24–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–008]

Calcium Hypochlorite From the People's Republic of China: Preliminary Intent To Rescind the New Shipper Review of Haixing Jingmei Chemical Products Sales Co., Ltd.

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a July 17, 2015 request from Haixing Jingmei Chemical Products Sales Co., Ltd. ("Jingmei"), and its affiliated producer, Haixing Eno Chemical Co., Ltd. ("Eno"), the Department of Commerce (the Department) is conducting a new shipper review of Haixing Jingmei Chemical Products Sales Co., Ltd. ("Jingmei"), regarding the antidumping duty order on calcium hypochlorite from the People's Republic of China ("PRC"). The period of review ("POR")

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[6] *See* "2012–2013 Administrative Review of the Antidumping Order on Carbon and Certain Alloy Steel Wire Rod from Mexico: Ministerial Error Allegations for Final Results" dated concurrently with this notice ("Ministerial Errors Memorandum").

[7] *Id.*

[8] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002).

is July 25, 2014, through June 30, 2015.[1] The Department preliminarily determines to rescind this review because we requested but were not provided sufficient information to conduct a *bona fide* analysis as required by the statute, and accordingly cannot determine whether Jingmei's new shipper sales are *bona fide.* Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* June 27, 2016.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2015, the Department published notice of initiation of a new shipper review of calcium hypochlorite from the PRC for the period July 25, 2014, through June 30, 2015.[2] On November 5, 2015, the Department extended the deadline for the preliminary results to June 14, 2016.[3] The Department tolled the deadline for these preliminary results by an additional four business days as a result of the Government closure due to Snowstorm "Jonas," which extended the deadline to June 20, 2016.[4]

Scope of the Order

The merchandise covered by the Order is calcium hypochlorite, regardless of form (*e.g.*, powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10% available chlorine measured by actual weight. Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States.[5]

Methodology

The Department is conducting this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and in the Department's Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Rescission of Jingmei New Shipper Review

For the reasons detailed in the Preliminary Decision Memorandum, the Department preliminarily finds that, as a result of Jingmei's customers' failure to provide necessary information, we cannot determine whether Jingmei's sales under review are *bona fide,* and, therefore, whether they provide a reasonable or reliable basis for calculating a dumping margin. As result, the Department is preliminarily rescinding the new shipper review of Jingmei.

Disclosure and Public Comment

The Department will disclose the analysis performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments by no later than 30 days after the date of publication of these preliminary results of review.[6] Rebuttals, limited to issues raised in the written comments, may be filed by no later than five days after the written comments are filed.[7]

Any interested party may request a hearing within 30 days of publication of this notice.[8] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[9]

The Department intends to issue the final results of this new shipper review, which will include the results of its analysis of issues raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and the U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. If we proceed to a final rescission of the new shipper review, Jingmei's entries will be assessed at the rate entered.[10] If we do not proceed to a final rescission of the new shipper review, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*[11]

Cash Deposit Requirements

Effective upon publication of the final rescission or the final results of this new shipper review, we will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Jingmei. If the Department proceeds to a final rescission of the new shipper review, the cash deposit rate will continue to be the PRC-wide rate. If we issue final results of the new shipper review for Jingmei, we will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

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[1] *See Calcium Hypochlorite From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2014–2015,* 80 FR 51774 (August 26, 2015).

[2] *See Calcium Hypochlorite From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2014–2015,* 80 FR 51774 (August 26, 2015).

[3] *See* Memorandum to the File through James C. Doyle, Director, Office V, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Extension of Deadline for Preliminary Results of New Shipper Review; 2014–2015" (November 5, 2015).

[4] *See* Memorandum for the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas' " (January 27, 2016).

[5] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Decision Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Calcium Hypochlorite from the People's Republic of China: Haixing Jingmei Chemical Products Sales Co., Ltd." dated concurrently with and hereby adopted by this notice ("Preliminary Decision Memorandum") for a complete description of the Scope of the Order. *See also* Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Catherine Bertrand, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Kabir Archuletta, Senior International Trade Analyst, titled "*Bona Fide* Nature of the Sales in the Antidumping Duty New Shipper Review of Calcium Hypochlorite from the People's Republic of China: Haixing Jingmei Chemical Products Sales Co., Ltd." dated concurrently with this notice.

[6] *See* 19 CFR 351.309(c).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.310(c).

[9] *See* 19 CFR 351.310(d).

[10] *See* 19 CFR 351.212(c).

[11] *See* 19 CFR 351.106(c)(2).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(l) of the Act, and 19 CFR 351.214 and 19 CFR 351.221(b)(4).

Dated: June 20, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Recommendation

[FR Doc. 2016–15135 Filed 6–24–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE689

Marine Mammals; File No. 18529

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Janice Straley, Ph.D., University of Alaska Southeast, 1332 Sward Ave., Sitka, AK 99835, has applied in due form for a permit to conduct research on 16 species of cetaceans.

DATES: Written, telefaxed, or email comments must be received on or before July 27, 2016.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 18529 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to further the understanding of large whales in Alaskan waters by conducting vessel research, including photo-identification, behavioral observations, acoustic playbacks, biopsy sampling, suction cup and dart tagging, underwater photography/video, and prey-mapping sonar. Prey samples, blow, sloughed skin and feces would also be collected. Research would occur in all Alaskan waters, including southeastern Alaska, Glacier Bay National Park and Preserve, Prince William Sound, Gulf of Alaska, Bering Sea, Chukchi Sea, and Beaufort Sea. Specific goals are to: (1) Continue and expand a study of humpback whales (*Megaptera novaeangliae*); (2) study sperm whale (*Physeter macrocephalus*) movements, foraging behavior, and depredation on longline fishing gear; (3) study killer whale (*Orcinus orca*) seasonal movements, foraging, migration patterns and depredation; and (4) enhance the body of knowledge, stock structure, and current status of other cetacean species in the study area. In addition to the three focus species, six other large whale species and seven other small cetaceans would be targeted for research. The permit would be valid for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 21, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–15095 Filed 6–24–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request; Patent Cooperation Treaty

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office, Commerce.

Title: Patent Cooperation Treaty.

OMB Control Number: 0651–0021.

Form Numbers:

- PCT/RO/101
- PCT/RO/134
- PCT/IB/372
- PCT/IPEA/401
- PTO–1382
- PTO–1390
- PTO/SB/61/PCT

- PTO/SB/64/PCT

Type of Request: Revision of a currently approved collection.

Number of Respondents: 423,970 responses per year.

Average Hours per Response: The USPTO estimates that it will take the public approximately 0.25 hours (15 minutes) to 8 hours to gather the necessary information, prepare the appropriate form or documents, and submit the information to the USPTO.

Burden Hours: 364,830 burden hours per year.

Cost Burden: $149,380,300 per year.

Needs and Uses: The purpose of the Patent Cooperation Treaty (PCT) is to provide a standardized filing format and procedure that allows an applicant to seek protection for an invention in several countries by filing one international application in one location, in one language, and paying one initial set of fees. The information in this collection is used by the public to submit a patent application under the PCT and by the USPTO to fulfill its obligation to process, search, and examine the application as directed by the treaty.

Affected Public: Individuals or households; business or other for-profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraiser, email: *Nicholas_A._Fraiser@omb.eop.gov.* Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include "0651–0021 copy request" in the subject line of the message.
- *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before July 27, 2016 to Nicholas A. Fraiser, OMB Desk Officer, via email to *Nicholas_A._Fraiser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraiser.

Dated: June 21, 2016.

Marcie Lovett,

Records Management Division Director, USPTO, Office of the Chief Information Officer.

[FR Doc. 2016–15108 Filed 6–24–16; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery; Request for Nominations

AGENCY: Department of the Army, DoD.

ACTION: Notice; Request for Nominations.

SUMMARY: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on Arlington National Cemetery, including, but not limited to cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the Committee's advice and recommendations. The Committee is comprised of no more than nine (9) members. Subject to the approval of the Secretary of Defense, the Secretary of the Army appoints no more than seven (7) of these members. The purpose of this notice is to solicit nominations from a wide range of highly qualified persons to be considered for appointment to the Committee. Nominees may be appointed as members of the Committee and its sub-committees for terms of service ranging from one to four years. This notice solicits nominations to fill Committee membership vacancies that may occur through 31 December, 2016. Nominees must be preeminent authorities in their respective fields of interest or expertise.

DATES: All nominations must be received at (see **ADDRESSES**) no later than September 1, 2016.

ADDRESSES: Interested persons may submit a resume for consideration by the Department of the Army to the Committee's Designated Federal Officer at the following address: Advisory Committee on Arlington National Cemetery, ATTN: Designated Federal Officer (DFO) (Ms. Yates), Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates, Designated Federal Officer, by email at *renea.c.yates.civ@mail.mil* or by telephone 877–907–8585.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Arlington National Cemetery was established pursuant to Title 10, United States Code, Section 4723. The selection, service and appointment of members of the Committee are covered by the Committee Charter, available on the Arlington National Cemetery Web site *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/Charter.* The substance of these provisions of the Charter is as follows:

a. *Selection.* The Committee Charter provides that the Committee shall be comprised of no more than nine members, all of whom are preeminent authorities in their respective fields of interest or expertise. Of these, no more than seven members are nominated by the Secretary of the Army.

By direction of the Secretary of the Army, all resumes submitted in response to this notice will be presented to and reviewed by a panel of three senior Army leaders. Potential nominees shall be prioritized after review and consideration of their resumes for: demonstrated technical/professional expertise; preeminence in a field(s) of interest or expertise; potential contribution to membership balance in terms of the points of view represented and the functions to be performed; potential organizational and financial conflicts of interest; commitment to our Nation's veterans and their families; and published points of view relevant to the objectives of the Committee. The panel will provide the DFO with a prioritized list of potential nominees for consideration by the Executive Director, Army National Military Cemeteries, in making an initial recommendation to the Secretary of the Army. The Executive Director, Army National Military Cemeteries; the Secretary of the Army; and the Secretary of Defense are not limited or bound by the recommendations of the Army senior leader panel. Sources in addition to this **Federal Register** notice may be utilized in the solicitation and selection of nominations.

b. *Service.* The Secretary of Defense may approve the appointment of a Committee member for a one-to-four year term of service; however, no member, unless authorized by the Secretary of Defense, may serve on the Committee or authorized subcommittee for more than two consecutive terms of service. The Secretary of the Army shall designate the Committee Chair from the total Advisory Committee membership.

The Committee meets at the call of the DFO, in consultation with the Committee Chair. It is estimated that the Committee meets four times per year.

c. *Appointment.* The operations of the Committee and the appointment of members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations, including Department of Defense Instruction 5105.04, Department of Defense Federal Advisory Committee Management Program, available at *http://www.dtic.mil/whs/directives/corres/pdf/510504p.pdf.* Appointed members who are not full-time or permanent part-time Federal officers or employees shall be appointed as experts and consultants under the authority of Title 5, United States Code, Section 3109 and shall serve as special government employees. Committee members appointed as special government employees shall serve without compensation except that travel and per diem expenses associated with official Committee activities are reimbursable.

Additional information about the Committee is available on the Internet at: *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/Charter*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–15151 Filed 6–24–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0026]

Proposed Collection; Comment Request

AGENCY: Assistant G–1 for Civilian Personnel, Non-Appropriated Funds Policy and Programs Division, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* Assistant G–1 for Civilian Personnel, Non-Appropriated Funds Policy and Programs Division announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 26, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Mailbox 24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, Assistant G–1 for Civilian Personnel, Non-Appropriated Funds Policy and Programs Division, ATTN: DAPE–CPN, 6010 6th Street, Building 1465, Fort Belvoir, VA 33060, or call 703–806–3097.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Non-Appropriated Funds Employment, DA Form 3433; OMB Control Number: 0702–XXXX.

Needs And Uses: The information collection requirement is necessary to determine qualification requirements and suitability of an applicant seeking employment with Non-Appropriated Funds Instrumentalities.

Affected Public: Individuals or Households; Federal Government.

Annual Burden Hours: 158,875.

Number of Respondents: 317,751.

Responses per Respondent: 1.

Annual Responses: 317,751.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Respondents are applicants seeking employment with Non-Appropriated Funds Instrumentalities. DA Form 3433, Application for Non-Appropriated Funds Employment, records employment history and qualifications of applicants to determine their eligibility for employment. The completed form is maintained electronically in the Official Personnel Folder system for the selected applicants upon appointment, and for non-selected applicants, the application is maintained in the staffing case file and destroyed after 1 year.

Dated: June 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–15122 Filed 6–24–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0025]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Army proposes to alter a system of records notice A0145–1 TRADOC, entitled "Army Reserve Officer's Training Corps (ROTC) and Financial Assistance Programs" to provide a central database of potential prospects for enrollment in the ROTC and the Senior Army ROTC program, provide training and commissioning of eligible cadets in active Army and to assist prospects by providing information concerning educational institutions having ROTC programs; scholarship information and applications, information on specialized programs such as nursing, Green to Gold and historically Black Colleges and Universities and information regarding other Army enlistment, reserve or National Guard programs. This program also administers the financial assistance program; renders the selection of recipients for 2, 3, and 4 year scholarships; monitor selectees performance (academic and ROTC) and also develop policies and procedures, compile statistics and render reports.

DATES: Comments will be accepted on or before July 27, 2016. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Audit Matters Office, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905; telephone (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on June 8, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: June 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0145–1 TRADOC

SYSTEM NAME:

Army Reserve Officer's Training Corps (ROTC) and Financial Assistance Programs (May 10, 2001, 66 FR 23899)

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "A0145–1 AHRC."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Commander, US Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5500."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Individual applications and/or prospect referrals for appointment which include personal data including: name, Social Security Number (SSN), sex, ethnicity, race, height, weight, date and place of birth, citizenship, home address, home and cell phone numbers, email address, marital status, number of dependents, parental information; parent/guardian home of record state, email address, mother's maiden name, name of high school, high school graduation date, grade point average, Scholastic Assessment Test, American College Testing, Preliminary Scholastic Assessment Testing scores, college admission status, college(s) expected to attend, desired academic major(s), academic transcripts and certificates of education to prior military service information, training, college board scores and test results, medical examination, acceptance/declination, interview board results, financial assistance document awards, ROTC contract and evaluation from Professor of Military Science commanding officer, photographs, references, correspondence between the member and the Army or other Federal agencies, letters of recommendation, inquiries regarding applicant's selection or non-selection, letter of appointment in Active Army on completion of ROTC status, security clearance documents, reports of Reserve Officer Training Corps Advanced, Ranger, or Basic Camp performance of applicant."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 2031, Junior Reserve Officers' Training Corps; 10 U.S.C. 2104, Advanced training; eligibility for; 10 U.S.C 2107, Financial assistance program for specially selected members; Army Regulation 145–1, Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training; Army Regulation 145–2, Junior Reserve Officers' Training Corps Program: Organization, Administration, Operation, and Support; and E.O. 9397 (SSN), as amended."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Federal Aviation Administration to obtain flight certification and/or licensing.

To the Department of Veterans Affairs for member Group Life Insurance and/or other benefits.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*"

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Paper records and electronic storage media."

RETREIVABILITY:

Delete entry and replace with "By name and SSN."

SAFEGUARDS:

Delete entry and replace with "DoD Components and approved users ensure that electronic records collected and used are maintained in controlled areas accessible only to authorized personnel in the performance of their duties. Physical security differs from site to site, access to computerized data is restricted by use of common access cards (CACs) and is accessible only by users with an authorized account. The system and electronic backups are maintained in controlled facilities that employ physical restrictions and safeguards such as security guards, identification badges, key cards, and locks."

RETENTION AND DISPOSAL:

Delete entry and replace with "CC Form 139–R, Cadet Enrollment Record is retained in the ROTC unit for 5 years after cadet leaves the institution or is disenrolled from the ROTC program.

Following successful completion of ROTC and academic programs and appointment as a commissioned officer with initial assignment to active duty for training, copy of pages 1 and 2 are reproduced and sent to the commandant of individual's basic branch course school. Records of rejected ROTC applicants are destroyed. Other records mentioned in preceding paragraphs are immediately destroyed unless the records are for financial assistance which are retained for 1 year then destroyed or if they are not required to become part of individual's Military Personnel Records Jacket.

ROTC QUEST records are retained for 3 years then destroyed. ROTC Scholarship application records are destroyed 1 year after graduation or disenrollment.

Paper records are destroyed by tearing, burning, melting, chemical decomposition, pulping, pulverizing, shredding, or mutilation. Electronic records and media are destroyed by overwriting, degaussing, disintegration, pulverization."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, US Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5500."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, US Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5500.

Individuals should provide their full name, current address, telephone number and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' "

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, US Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5500.

Individuals should provide their full name, current address, telephone number and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' "

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 505, Army Privacy Program or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "From the individual, civilian educational institutions and staff, college registrars, dormitory directors, national testing organizations, honor societies, boys' clubs, boy scout organizations, Future Farmers of America, minority and civil rights organizations, fraternity and church organizations; neighborhood youth centers, YMCA, YWCA, social clubs, athletic clubs, scholarship organizations, U.S. Army Recruiting Command, Military Academy Liaison officers, West Point non-select listing, previous employers, trade organizations, and military service."

* * * * *

[FR Doc. 2016–15097 Filed 6–24–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2013–0013]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Army Career Tracker; DA Form 5434; OMB Control Number 0702–XXXX.

Type of Request: Existing collection in use without an OMB Control Number.

Number of Respondents: 173,338.

Responses per Respondent: 1.

Annual Responses: 173,338.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 28,889.

Needs And Uses: The information collection requirement is necessary to obtain and obtain and retain sponsorship program entitlements, and to provide information to gaining battalion or activity of new members.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: June 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2016–15043 Filed 6–24–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0075]

Proposed Collection; Comment Request

AGENCY: Pentagon Force Protection Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Pentagon Force Protection Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 26, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Pentagon Force Protection Agency, Policy Office, 9000 Defense Pentagon, ATTN: John Rudaski, Washington, DC 20301–9000 or call (703) 695–0484.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Law Enforcement Officers Safety Act (LEOSA) Firearms Identification Cards (FICs); PA Form 105; OMB Number 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to obtain information from individuals to validate eligibility of separating or separated PFPA law enforcement officers applying for a LEOSA FIC, to include Defense Protective Service of other predecessor agency law enforcement officers.

Affected Public: Individuals or Households.

Annual Burden Hours: 50 minutes.

Number of Respondents: 25.

Responses per Respondent: 1.

Annual Responses: 25.

Average Burden per Response: 2 minutes.

Frequency: On occasion.

Respondents are separating or separated Pentagon Force Protection Agency, Defense Protective Service, or other predecessor agency law enforcement officers applying for an identification card identifying them as a "qualified retired law enforcement officer" under 18 U.S.C. 926C and DoD Instruction 5525.12, "Implementation of the Amended Law Enforcement Officers Safety Act of 2004."

Dated: June 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–15140 Filed 6–24–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0076]

Agency Information Collection Activities; Comment Request; HEAL Program: Physician's Certification of Borrower's Total and Permanent Disability

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 26, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0076. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: HEAL Program: Physician's Certification of Borrower's Total and Permanent Disability.

OMB Control Number: 1845–0124.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Annual Responses: 70.

Total Estimated Number of Annual Burden Hours: 18.

Abstract: This is a request for an extension of OMB approval of information collection requirements associated with the form for the Health Education Assistance Loan (HEAL) Program, Physician's Certification of Borrower's Total and Permanent Disability currently approved under OMB No. 1845–0124. The form is HEAL Form 539. A borrower and the borrower's physician must complete this form. The borrower then submits the form and additional information to the lending institution (or current holder of the loan) who in turn forwards the form and additional information to the Secretary for consideration of discharge of the borrower's HEAL loans. The form provides a uniform format for borrowers and lenders to use when submitting a disability claim.

Dated: June 23, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–15234 Filed 6–24–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0075]

Agency Information Collection Activities; Comment Request; Application for Borrower Defense to Loan Repayment Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 26, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0075. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Borrower Defense to Loan Repayment Form.

OMB Control Number: 1845—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 10,000.

Total Estimated Number of Annual Burden Hours: 10,000.

Abstract: The Department of Education (the Department) requests approval of this new collection of an Application for Borrower Defense to Loan Repayment form ("Universal Borrower Defense Form") to ensure that all borrowers have a consistent platform to petition for relief, and to facilitate the Department's receipt of clear and complete information necessary to process applications efficiently. This form will facilitate processing claims from student borrowers who believe that they have a Borrower Defense claim regarding their Federal Loans. The form will provide borrowers with an easily accessible and clear method to provide the information necessary for the Department to review and process claim applications efficiently. The Universal Borrower Defense Form will set forth examples of the types of activities that could form the basis of borrowers' claims for Borrower Defense relief. A successful Borrower Defense claim would provide a full or partial discharge of a borrower's loans, as well as reimbursement of amounts previously paid (if appropriate).

Dated: June 22, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–15107 Filed 6–24–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–045]

Notice of Interim Waiver and Request for Waiver to AGA Marvel From the Department of Energy Refrigerator and Refrigerator-Freezer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of granting of interim waiver; notice of request for waiver; request for public comment.

SUMMARY: This notice announces receipt of a petition for waiver from AGA Marvel seeking an exemption from specified portions of the U.S. Department of Energy ("DOE") test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. AGA Marvel seeks to apply an alternative test procedure for measuring the energy usage of combination cooler-refrigerator basic models. DOE has reviewed AGA Marvel's alternate procedure. Rather than permit the use of this alternative procedure, which would effectively alter both the test procedure and the standard that AGA Marvel's products would need to meet, DOE has tentatively concluded that it is more appropriate to apply the alternative procedure that other manufacturers of similar products have been permitted to use in prior waivers granted by DOE. This approach would allow AGA Marvel to measure the energy use of its products while alleviating the testing problems that prompted AGA Marvel's request. Accordingly, DOE is granting to AGA Marvel an interim waiver to permit it to use this alternative testing method to measure the energy usage of its combination cooler-refrigerator basic models. DOE notes that the method detailed in this interim waiver is consistent with the most recent approach that DOE outlined in an interim waiver issued earlier this year for other similar products. DOE solicits comments, data, and information concerning AGA Marvel's petition and suggestions on the alternate test procedure DOE is permitting AGA Marvel to use as a condition of its interim waiver.

DATES: DOE will accept comments, data, and information with regard to the proposed modification until July 27, 2016.

ADDRESSES: You may submit comments, identified by Case Number RF–045, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov* Include [Case No. RF–043] in the subject line of the message. Submit electronic comments in Microsoft Word or PDF file format, and avoid the use of special characters or any form of encryption.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Room 6094, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar clothes washer products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371, Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 26, 2016, AGA Marvel submitted a petition for waiver and application for interim waiver under 10 CFR 430.27 for its combination cooler-refrigerator models. (A subsequent email from AGA Marvel sent on March 9, 2016, identified the specific basic models addressed in its petition.) AGA Marvel's submission seeks to use an alternative to the test procedure found at appendix A to subpart B of 10 CFR part 430. The basic models at issue incorporate wine chiller/beverage compartments (referred to as cooler compartments) that prevent the manufacturer from testing these products in accordance with the applicable test procedure in appendix A. Specifically, the cooler compartments operate at temperatures higher than the standardized compartment temperatures used for testing in appendix A. Accordingly, these basic models cannot be rated based on the test procedure in appendix A. DOE is granting AGA Marvel with an interim waiver but modifying the alternative testing method approach outlined in AGA Marvel's petition to ensure consistency with the approach outlined in a recently issued interim waiver issued for similar products.

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 ("EPCA"), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A.

DOE's regulations allow a person to seek a waiver from the test procedure requirements for a particular basic model of a type of covered consumer product when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

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[1] For editorial reasons, part B of EPCA was codified as part A in the U.S. Code.

The granting of a waiver is subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l). The waiver process also allows the granting of an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures upon a finding that it appears likely that the petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(e). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) Publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1).

A petitioner may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition. DOE will publish any such extension in the **Federal Register**. 10 CFR 430.27(g).

II. Application for Interim Waiver and Petition for Waiver

By letter dated January 26, 2016, AGA Marvel submitted a petition for waiver and application for interim waiver under 10 CFR 430.27(a) for 12 basic models of combination cooler-refrigerators that are required to be tested using the test procedure detailed at appendix A to subpart B of 10 CFR part 430. AGA Marvel supplemented its filing with a March 9, 2016, email identifying the basic models. Appendix A requires measuring the energy consumption of refrigerators using a standardized compartment temperature of 39 degrees Fahrenheit (°F), a temperature which AGA Marvel's products are not capable of achieving in all compartments. As a result, AGA Marvel seeks a waiver to appendix A's procedure to apply a standardized compartment temperature of 55 °F to the cooler compartments within its products. These compartments maintain a higher temperature typical for storing beverages. AGA Marvel also requested that the products be tested with a 0.55 usage factor, rather than with no usage factor as required according to appendix A, which is consistent with the test procedure approach recommended by the Miscellaneous Refrigeration Products ("MREF") Working Group. The Working Group's approach, which was developed during a recent negotiated rulemaking, is detailed in the relevant October 20, 2015, Term Sheet ("Term Sheet #1").[2]

DOE notes that it previously granted a similar waiver to Panasonic Appliances Refrigeration Systems Corporation of America ("PAPRSA") through an interim waiver (78 FR 35894 (June 14, 2013)) and a subsequent Decision and Order (78 FR 57139 (September 17, 2013)) under Case No. RF–031. DOE also granted an extension of waiver (79 FR 55769 (September 17, 2014)) to PAPRSA under Case No. RF–041. Additionally, DOE granted a similar waiver to Sanyo E&E Corporation ("Sanyo") through an interim waiver (77 FR 19654 (April 2, 2012)) and a subsequent Decision and Order (77 FR 49443 (August 16, 2012)) under Case No. RF–022. On October 4, 2012, DOE issued a notice of correction to the Decision and Order incorporating a K-factor (correction factor) value of 0.85 when calculating the energy consumption (77 FR 60688). Sanyo E&E Corporation has since changed its corporate name to Panasonic Appliances Refrigeration Systems Corporation of America, meaning that it is the same manufacturer to which DOE granted the August 2012 waiver. More recently, DOE became aware of minor issues with regard to the equations detailed in the prior waiver decisions. On January 26, 2016, DOE issued a proposed modification of its prior waivers and granted PAPRSA with an interim waiver (81 FR 4270) under Case No. RF–043 to correct the known issues.

AGA Marvel's petition for waiver included an alternate test procedure to account for the energy consumption of its combination cooler-refrigerator products. Specifically, it proposed using the test procedure for combination cooler refrigeration products detailed in the MREF Working Group's Term Sheet #1 noted earlier. In AGA Marvel's view, the Working Group's test procedure calculations, when compared with the current DOE test procedure's calculations, are the most representative of the annual energy usage of its combination cooler refrigeration products. However, DOE's recent notice detailing a modified version of the calculation method used to measure and rate the energy use of products similar to AGA Marvel's combination cooler-refrigerators provides a simpler and equitable solution to the problems identified in AGA Marvel's petition. See 81 FR 4270 (proposal to modify PAPRSA's alternative test method for combination cooler refrigeration products). Accordingly, applying the test method outlined in the recent PAPRSA interim waiver to determine compliance with the existing refrigerator standards would follow an already-established approach and help ensure consistency when testing similar products.

AGA Marvel also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 430.27(e)(2).

DOE understands that absent an interim waiver, AGA Marvel's products cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the alternate procedure offered by AGA Marvel and concludes that whatever procedure AGA Marvel uses should be consistent with the approach taken with similar interim waivers that have been granted to other manufacturers to allow for the accurate measurement of the energy use of these products, while alleviating the testing problems that prompted AGA Marvel's request. Consequently, while DOE has determined that AGA Marvel's petition for waiver will likely be granted, based on similar waivers that have been granted in the past, in DOE's view, the alternate test procedure used by AGA Marvel should be consistent with the approach permitted by DOE for other manufacturers with similar products. Accordingly, DOE, is granting AGA Marvel an interim waiver based on the modified test approach detailed in Section III of this document. In addition to the revised test procedure, DOE clarifies in this document the specific basic models that would be tested under the alternate approach.

Under the interim waiver, the alternate test procedure must be used, going forward, with respect to all of the basic models AGA Marvel identified in the collective portions of its petition. These models are listed in the following section.

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[2] See docket ID EERE–2011–BT–STD–0043 on *regulations.gov* for information on the MREF Working Group. Document 113 (Term Sheet #1) within that docket includes the Working Group's recommended test procedures.

III. Conclusion

Therefore, DOE has issued an Order, stating:

After careful consideration of all the material submitted by AGA Marvel in this matter, DOE grants an interim waiver regarding 12 basic models identified below. Accordingly, it is ORDERED that:

(1) AGA Marvel must, going forward, test and rate the following AGA Marvel basic models as set forth in paragraph (2) below.

Basic models under the MARVEL brand:

ML24WBG***1
ML24WBF***1
ML24WBS***1
ML24WBP***1

Basic models under the MARVEL Outdoor brand:

MO24WBG***1
MO24WBF***1
MO24WBS***1
MO24WBP***1

Basic models under the MARVEL Professional brand:

MP24WBG***1
MP24WBF***1
MP24WBS***1
MP24WBP***1

Where (*) represents a character in the model number that corresponds to door swing, door style, color, or marketing features and has no impact on the number of compartments, compartment function, product class, or test method.

(2) The applicable method of test for the AGA Marvel basic models listed in paragraph (1) is the test procedure for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A, except that the test temperature for the "cooler compartment" (*i.e.,* the compartment designed to store wine or other beverages) is 55 °F, instead of the prescribed 39 °F.

The K-factor (*i.e.,* correction factor) value is 0.85. The test must include (where applicable) the icemaking energy usage as defined in 10 CFR part 430, subpart B, appendix A, sec. 6.2.2.1.

Therefore, the energy consumption is defined by:

If compartment temperatures are below their respective standardized temperatures for both test settings (according to 10 CFR part 430, subpart B, appendix A, sec. 6.2.2.1):

$$E = (ET1 \times 0.85) + IET.$$

If compartment temperatures are not below their respective standardized temperatures for both test settings, the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, appendix A, sec. 6.2.2.2):

Energy consumption of the "cooler compartment":

$$E_{Cooler\ Compartment} = (ET1 + [(ET2 - ET1) \times (55\ °F - TW1)/(TW2 - TW1)])\ {*}0.85 + IET.$$

Energy consumption of the "fresh food compartment":

$$E_{FreshFood\ Compartment} = (ET1 + [(ET2 - ET1) \times (39\ °F - TBC1)/(TBC2 - TBC1)])\ {*}0.85 + IET.$$

If the optional test for models with two compartments and user operable controls is used (according to 10 CFR part 430, subpart B, appendix A, sec. 6.2.2.3):

$$E = (Ex \times 0.85) + IET.$$

(3) Representations. AGA Marvel may make representations about the energy use of its combination cooler-refrigerator products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing in accordance with 10 CFR 429.14(a).

(4) This interim waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(h), (k), and (l).

(5) This interim waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(6) Granting of this interim waiver does not release AGA Marvel from the certification requirements set forth at 10 CFR part 429.

IV. Summary and Request for Comments

Through this notice, DOE has granted AGA Marvel an interim waiver from the specified portions of the test procedure for certain basic models of AGA Marvel combination cooler-refrigerators and announces receipt of AGA Marvel's request for petition of waiver from those same portions of the test procedure. DOE is publishing AGA Marvel's request for a petition of waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to determine the energy consumption of AGA Marvel's specified combination cooler-refrigerators. AGA Marvel is required to follow this alternate procedure, as modified in Section III of this document, as a condition of its interim waiver. DOE will consider the continued use of this procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Joshua Ambrose, Project Engineer, AGA Marvel, 1260 E. VanDeinse St., Greenville, MI 48838. All comment submissions to DOE must include the Case Number RF–045 for this proceeding. Submit electronic comments in Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on June 16, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

January 26, 2016

U.S. Department of Energy
Building Technologies Office
Office of Energy Efficiency and Renewable Energy
1000 Independence Avenue SW
Washington, DC 20585–0121

To whom it may concern:

Pursuant to 10 CFR 430.27, AGA Marvel respectfully submits this Petition for Waiver and application for Interim Waiver for AGA Marvel combination cooler refrigerator models on the grounds that the affected models listed below contain one or more design characteristics that prevent testing of the basic model according to the test procedures prescribed in 10 CFR 430, subpart B, appendix A. Without this waiver, AGA Marvel is unable to certify models as compliant with 2014 DOE energy conservation standards. This request is similar to past petitions for waivers that have been granted by DOE to Sub-Zero (80 FR 7854), PAPRSA (78 FR 35894), and Sanyo (77 FR 49443), who make similar combination cooler refrigerator products.

10 CFR 430.27 states: "DOE will grant a waiver from the test procedure requirements if DOE determines either the basic model(s) for which the waiver was requested contains

a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data." AGA Marvel requests that the DOE grant this petition on both grounds.

In November 2011, the DOE began a process to consider whether to include as covered products, and establish energy conservation standards for certain types of refrigeration products, that largely fall outside of DOE's regulations pertaining to refrigerators, refrigerator-freezers, and freezers. To help better inform its potential regulation of these items, DOE established a negotiated rulemaking Working Group that would operate under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) with the purpose of exploring possible energy efficiency requirements for Miscellaneous Refrigeration Products (MREFs) (80 FR 17355). The Working Group ultimately reached consensus among its members on a variety of issues, including the potential scope of coverage, applicable definitions, test procedure details, and energy conservation standards that would apply to these products and compiled these recommendations into a term sheet for consideration by ASRAC (EERE–2011–BT–STD–0043).

In granting the most recent petition to Sub-Zero, DOE confirmed the previous rulings for Sanyo, and PAPRSA, that cooler compartments cannot be tested at the prescribed temperature of 39 °F because the minimum compartment temperature is higher than the standardized temperature of 39 °F. The Working Group has defined a cooler compartment as, "a refrigerated compartment designed exclusively for wine or other beverages within a consumer refrigeration product that is capable of maintaining compartment temperatures either (a) no lower than 39 °F (3.9 °C), or (b) in a range that extends no lower than 37 °F (2.8 °C) but at least as high as 60 °F (15.6 °C) as determined according to § 429.14(d)(2) or § 429.61(d)(2)."

The alternate test procedure used in all three previous waivers (originally submitted by Sanyo), accounts for the energy consumption of combination cooler refrigerator models. The procedure tests the wine storage compartment at 55 °F, instead of the prescribed 39 °F. 55 °F is presumed to be representative of expected consumer use, as it is the ideal long-term storage temperature for both red and white wine. 55 °F is also used in the test procedures for wine products adopted by the Association of Home Appliance Manufacturers (AHAM), California Energy Commission (CEC), and Natural Resources Canada (NRCan).

The test procedure recommended by the MREF Working Group is slightly modified from the test procedure used in the previous waivers, and has been agreed to in the final ASRAC Miscellaneous Refrigeration Products Term Sheet dated October 20, 2015.

Affected Models

The basic models affected that are manufactured by AGA Marvel use the following model number layout:

*WB∧

Where:

WB—Represents the model platform, which corresponds to Dual-Zone Wine/Beverage Center (combination cooler refrigerator) containing exactly one cooler compartment and one refrigerator compartment.

(*)—Represents characters in the model number that correspond to brand and width

(∧)—Represents characters in the model number that correspond door swing, door style, color, and marketing features.

The * and ∧ characters have no impact on the number of compartments, compartment function, product class, or test method.

Design Characteristics Dictating a Waiver

AGA Marvel is requesting a waiver to the test procedures for its combination cooler/refrigerator models that consist of one refrigerated storage compartment and one cooler compartment. The DOE considers combination cooler/refrigerator models as covered products to be tested according to DOE test procedures for All-Refrigerators prescribed in 10 CFR 430, subpart B, appendix A. The test conditions specify that energy consumption is to be determined using the fresh food compartment standardized temperature of 39 °F for both compartments.

It is not possible to test and rate these combination models under the existing testing procedures, as the cooler compartment of these models is not designed for, nor capable of meeting the standardized temperature of 39 °F. AGA Marvel has designed the cooler compartments of its products to achieve a temperature range ideal for wine storage, with the coldest temperature setting for the compartment being above 39 °F. Also, the current testing requirements do not measure energy usage in a manner that truly represents the energy-consumption characteristics of these products.

AGA Marvel requests an interim waiver until a waiver for the affected models is granted or a final ruling is made on the energy efficiency requirements and test procedures for this combination cooler refrigeration product under the MREF DOE ruling. It is essential that an interim waiver is granted, as AGA Marvel has planned sales volumes for the affected models in the annual budget, with a planned launch date of 3rd quarter of 2016.

Proposed Modified Test Procedure

AGA Marvel proposes to use the test procedure for combination cooler refrigeration products, listed in ASRAC Miscellaneous Refrigeration Products Term Sheet dated October 20, 2015, as the calculations are most representative of AGA Marvel's combination product annual energy usage. The affected basic models are defined as "cooler-all refrigerators" in Appendix 2 of the Term Sheet, as the basic models have one cooler compartment and one refrigerator compartment capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C).

In section 4 subpart 4.2 of the Term Sheet, "The working group recommends product classes for combination cooler refrigeration products that are analogous to the 2014 refrigerator, refrigerator-freezer, and freezer product classes. A product would be classified into a product class of combination cooler refrigeration product based on how the product would be classified without a cooler compartment." Without a cooler compartment, the affected basic models are covered by the 13A standard (Compact All-Refrigerator—Automatic Defrost).

Appendix 3 subpart 3.2 of the Term Sheet states the test shall use a standardized temperature of 39 °F for the fresh food compartment and a standardized temperature of 55 °F for the cooler compartment. The test sequence follows the same test sequence for all-refrigerators in 10 CFR 430, subpart B, appendix A.

Appendix 3 subpart 5.2.1.1 of the Term Sheet defines the energy consumption in kilowatt-hours per day as:

$$ET = (EP \times 1440 \times K)/T$$

Where:

K = dimensionless correction factor of 0.55 for combination cooler refrigeration products to adjust for average household usage.

Appendix 3 subpart 6.2.4.2 of the Term Sheet defines the average per-cycle energy consumption as the higher of the two values calculated by the following two formulas:

Energy consumption of the wine compartment:

$$E\ Cooler = (ET1 + [(ET2 - ET1) \times (55\ °F - TC1)/(TC2 - TC1)]) + IET$$

Energy consumption of the refrigerated beverage compartment:

$$E\ Fresh\ Food = ET1 + [(ET2 - ET1) \times (39\ °F - TR1)/(TR2 - TR1)] + IET$$

Where:

IET equals 0 for all products without an automatic icemaker.

Combination refrigerator coolers are currently certified to the 2014 DOE Energy Consumption Standards using the alternative test procedure established in the waivers granted to petitioning manufacturers. The 2014 13A standard needs to be adjusted to reflect the new .55 usage factor for coolers and combination cooler refrigerators. To do this the AEU equation must first be divided by .85(15% usage credit used in granted waivers) to establish the maximum allowable energy consumption of a combination product to the existing 2014 standard. That value is then multiplied by .55 to reflect the new energy consumption standard for combination product. In section 4 subpart 4.2 of the Term Sheet, to simplify conversion, the AEU equation is multiplied by a correction factor of .647(.55/.85).

Thus, the maximum AEU in kWh/year for a compact combination cooler refrigerator is defined as:

$$AEU = (9.17AV + 259.3) * 0.647$$

In conclusion, 2014 Energy Conservation Standards do not allow an energy use rating to be calculated for the affected basic models listed, and AGA Marvel respectfully requests that DOE considers this petition for an interim and final waiver. AGA Marvel would be pleased to discuss this waiver petition with DOE and provide any additional information that DOE might require.

Sincerely,

Joshua Ambrose,
Project Engineer.

James R. Holland,
Director of Engineering.
AGA Marvel, 1260 E. VanDeinse St., Greenville, MI 48838 USA, T. 616–754–5601, F. 616–754–9690, www.agamarvel.com.

Supplemental E-Mail from AGA Marvel

From: Joshua Ambrose
Sent: Wednesday, March 09, 2016 11:05 a.m.
To: Berringer, Bryan
Subject: RE: Petition for Waiver—AGA Marvel

Bryan,

AGA Marvel is the manufacturer of all models in the petition and all models are under the Marvel brand. In the Marvel brand we have (3) "series" of product, and the series associated with the model numbers are as follows:

MARVEL

— ML24WBG***1
— ML24WBF***1
— ML24WBS***1
— ML24WBP***1

MARVEL Outdoor

— MO24WBG***1
— MO24WBF***1
— MO24WBS***1
— MO24WBP***1

MARVEL Professional

— MP24WBG***1
— MP24WBF***1
— MP24WBS***1
— MP24WBP***1

Let me know if you need anything else.

Thanks,

Josh Ambrose,
Project Engineer, AGA MARVEL, 1260 East Van Deinse Street, Greenville, MI 48838.

[FR Doc. 2016–15142 Filed 6–24–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0665; FRL–9948–34–OW]

RIN 2040–ZA25

Preliminary 2016 Effluent Guidelines Program Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Environmental Protection Agency's (EPA) Preliminary 2016 Effluent Guidelines Program Plan (Preliminary 2016 Plan) and solicits public comment. Section 304(m) of the Clean Water Act (CWA) requires EPA to biennially publish a plan for new and revised effluent limitations guidelines, after public review and comment. The Preliminary 2016 Plan identifies any new or existing industrial categories selected for effluent guidelines or pretreatment standards and provides a schedule for their development. EPA typically publishes a preliminary plan upon which the public is invited to comment, and then publishes a final plan thereafter. The information and analyses from the 2015 Annual Review were used in developing the Preliminary 2016 Plan.

DATES: Comments must be received on or before July 27, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0665, to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Swietlik, Engineering and Analysis Division, Office of Water, 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–1129; fax number: (202) 566–1053; email address: *swietlik.william@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Supporting Documents—A key document providing additional information includes the 2015 Annual Effluent Guidelines Review Report.

B. *How Can I Get Copies of These Documents and Other Related Information?*

1. Docket. EPA has established official public dockets for these actions under Docket ID No. EPA–HQ–OW–2015–0665. The official public docket is the collection of materials that are available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460.

2. Electronic Access. You can access this **Federal Register** document electronically through the United States government online source for Federal regulations at *http://www.regulations.gov.*

3. Internet access. Copies of the supporting documents are available at *http://www.epa.gov/eg/effluent-guidelines-plan.*

C. *What Should I Consider as I Prepare My Comments for EPA?*

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency might ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

II. How is this document organized?

The outline of this notice follows.

A. Legal Authority
B. Summary of the Preliminary 2016 Effluent Guidelines Program Plan
C. Request for Public Comments and Information

A. Legal Authority

This notice is published under the authority of the CWA, 33 U.S.C. 1251, *et seq.*, and in particular sections 301(d), 304(b), 304(g), 304(m), 306, 307(b), and 308 of the Act, 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, 1317(b), and 1318.

B. Summary of the Preliminary 2016 Effluent Guidelines Program Plan

EPA prepared the Preliminary 2016 Plan pursuant to CWA section 304(m). The Preliminary 2016 Plan provides a summary of EPA's review of effluent guidelines and pretreatment standards, consistent with CWA sections 301(d), 304(b), 304(g), 304(m), and 307(b). From these reviews, the Preliminary 2016 Plan identifies any new or existing industrial categories selected for effluent guidelines or pretreatment standards rulemakings, and provides a schedule for such rulemakings. In addition, the Preliminary 2016 Plan presents any new or existing categories of industry selected for further review and analysis. The Preliminary 2016 Plan and 2015 Annual Effluent Guidelines Review Report can be found at *http://www.epa.gov/eg/effluent-guidelines-plan.*

C. Request for Public Comments and Information

EPA requests comments and information on the following topics:

1. Data Sources and Methodologies

EPA solicits comments on the evaluation factors, criteria, and data sources used in conducting its 2015 Annual Review and in developing the Preliminary 2016 Plan. EPA also solicits comment on other data sources it might use in its annual reviews and biennial planning process.

2. The Preliminary 2016 Effluent Guidelines Program Plan

EPA solicits comments on its Preliminary 2016 Plan, including the data and information used to support the findings, actions, and conclusions as stated in the Preliminary 2016 Plan. Specifically, EPA solicits public comment and stakeholder input, data and information on:

(a) Industry Reviews. EPA is initiating or continuing to review wastewater discharges for the following industry categories: Iron and Steel Manufacturing; Organic Chemicals, Plastics, and Synthetic Fibers; Pulp, Paper, and Paperboard; Battery Manufacturing; and Electrical and Electronic Components Manufacturing. EPA solicits data and information regarding the discharge and treatment of pollutants identified in the Preliminary 2016 Plan from these industrial processes, as well as any other information relevant to EPA's review.

(b) Continued Study of Centralized Waste Treatment (CWT) facilities. EPA gathered information about CWT facilities across the country and identified those facilities that currently accept or have in the past accepted oil and gas extraction wastewaters. EPA included a memorandum in the record that identifies these facilities. EPA requests comment on the accuracy and completeness of the information contained in this memorandum, as well as any other information relevant to EPA's study of CWT facilities.

(c) Conventional Extraction in the Oil and Gas Industry. EPA solicits data and information for the first time on known transfers of wastewater originating from conventional oil and gas extraction facilities to Publicly Owned Treatment Works (POTWs). In particular, EPA seeks information on the extent to which this practice is occurring, including the identification of conventional oil and gas facilities which discharge to POTWs. EPA also requests information on wastewater volumes transferred to POTWs as well as information on the pollutants in these wastewater (type, concentration, etc.) and any other known characteristics of the pollutants.

(d) Produced Water Discharges in the Oil and Gas Industry. EPA solicits information for the first time on the quantity, composition, and purpose of well treatment and workover fluids in produced water discharges authorized under 40 CFR part 435, subpart E (Agricultural and Wildlife Water Use Subcategory) which, if good enough quality, can be used for wildlife or livestock watering or other agricultural uses, and are actually put to such use during periods of discharge. EPA solicits information on both conventional and unconventional oil and gas extraction. For this solicitation, "Well treatment fluids" means any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. "Workover fluids" means salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair, or abandonment procedures.

3. Innovation and Technology in the Effluent Guidelines Program

EPA solicits input on ideas, approaches and information on how to design smart regulations to support emerging technologies as described in "*A Strategy for American Innovation,*" prepared by the National Economic Council and Office of Science and Technology Policy. October 2015. See: *https://www.whitehouse.gov/sites/default/files/strategy_for_american_innovation_october_2015.pdf.*

Dated: June 17, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–15133 Filed 6–24–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9948–36–Region 9]

Casmalia Resources Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA) and section 7003 of the Resource Conservation and Recovery Act (RCRA), the Environmental Protection Agency (EPA) is hereby providing notice of a proposed administrative *de minimis* settlement concerning the Casmalia Resources Superfund Site in Santa Barbara County, California (the Casmalia Resources Site). Section 122(g) of CERCLA provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of the 171 settling parties identified below for the Casmalia Resources Site under sections 106 and 107 of CERCLA and section 7003 of RCRA. These parties have also elected to resolve their liability for response costs and potential natural resource damage claims by the United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA). These 171 parties sent 27,811,584 lbs. of waste to the Casmalia Resources Site, which represents 0.005 (0.5%) of the total Site waste of 5.6 billion pounds. This settlement requires these parties to pay over $1.7 million to EPA.

DATES: EPA will receive written comments relating to the settlement until July 27, 2016. EPA will consider all comments it receives during this period, and may modify or withdraw consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

Public Meeting: In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. The deadline for requesting a public meeting is July 11, 2016. Requests for a public meeting may be made by contacting Russell Mechem by email at *Mechem.russell@epa.gov.* If a public meeting is requested, information about the date and time of the meeting will be published in the local newspaper, *The Santa Maria Times,* and will be sent to persons on the EPA's Casmalia Resources Site mailing list. To be added to the mailing list, please contact: Alejandro Diaz at (415) 972–3242 or by email at *diaz.alejandro@epa.gov.*

ADDRESSES: Written comments should be addressed to Casmalia Case Team, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street (mail code SFD–7–1), San Francisco, California 94105–3901, or may be sent by email to *Mechem.russell@epa.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of the settlement document and additional information about the Casmalia Resources Site and the proposed settlement may be obtained on the EPA-maintained Casmalia Resources Site Web site at: *http://www.epa.gov/region09/casmalia* or by calling Russell Mechem at (415) 972–3192.

SUPPLEMENTARY INFORMATION:

Settling Parties: Parties that have elected to settle their liability with EPA at this time are as follows:

3M/McGhan Medical Corporation; A&E Products Group, Inc.; Aberdeen American Petroleum Company; Advance Packaging Systems/Interamics; AGL Resources, Inc. and its subsidiaries; AHMC Healthcare, Inc.; Alhambra Unified School District; Amvac Chemical Corporation; Apache Nitrogen Products, Inc.; Applied Graphics Technologies; AVX Corporation; Bank of America, N.A., successor in interest to Security Pacific Corp—Brea Operations; Barclays American Business Credit; Bayer; Benge Trumpet Co.; BGN Fremont Square, LTD; BHP Billiton Petroleum; BMW of San Diego; Broadway So. Calif Crenshaw Shopping; Bulk Transportation; Burbank Plating Service Corporation; Burlington Engineering, Inc.; Canon, Inc.; Carmen Plaza Car Wash; Casitas Municipal Water District; CenterPoint Energy, Inc and it's wholly owned subsidiaries Primary Fuels, Inc.; Central Coast Analytical Services; Certified Freight Lines; City of Benicia; City of El Monte; City of Escondido; City of Piedmont; City of West Covina; Consolidated Container Company LP for itself and as an alleged successor in interest to Stewart/Walker Co; Consolidated Oil & Gas, Inc.; Cooper Companies, Inc.; County of Napa; County of Solano; County of Stanislaus; Creative Press; Danco Metal Surfacing; Data General Corp; Davlin Paint Co.; Daylight Transport, LLC; Deep Water Oil and Gas Corp; Dignity Health; Dole Food Company; Dura Tech Processes, Inc.; EKC Technology, Inc.; El Dorado Newspapers dba McClatchy Printing Co; ENGS Motor Truck Company; Ennis Business Forms; Excellon Automation; Farrar Grinding; Federal Envelope Company; Foster Lumber; Fujitsu; Gardena Specialized Processing; Genstar Roofing Products Company; GEO Western Drilling Fluids; Gerald V. Dicker Commercial Properties; Gooch & Housego PLC; Gorham Manufacturing Company; Granitize Products, Inc.; H Koch & Sons Div; Handy & Harman Electronic Materials Corp; Helix Water District; Henry Soss & Co; Hordis Brothers, Inc.; Hycor Biomedical, Inc.; Immunetech Pharmaceuticals, Inc.; Inamed Corporation; Industrial Process & Chemical Co., Inc.; International Paper Company; Interstate Consolidation; J B Hunt; J E Dewitt, Inc.; J.C. Penneys; John Deere Parts Depot; John L. Armitage & Co.; Kasler Continental Heller; Kester Solder; Knape & Vogt Mfg.; Knight Foundry, Inc.; Lehigh Hanson, Inc.; Levins Metal Corp; LH Research, Inc.; Lincoln Blvd. Car Wash; Liquid Air Corporation; Loma Linda Foods Co.; Ludlow Saylor n/k/a Metso Minerals Industries, Inc.; Marbro Lamp Company; McClatchy Newspaper Inc.; Mission Kleensweep Products, Inc.; Model Lands, Inc.; MWH Global; Myers Electronic Products, Inc.; National Airmotive Corporation; New Mexico Institute of Technology; New Mexico State University; Newpark Resources, Inc.; Newport Adhesive; Newport Specialty Hospital for itself and on behalf of Prospect Medical Holdings; Nike, Inc.; North American Philips; North American Van Lines; NuSil Technology, LLC; Opto Electronics; Overton Moore & Associates, Inc.; P.T.I. Technologies, Inc.; Pacific Wood Preserving Co.; PacOrd, Inc.; Palomar Systems & Machine; Paramount Machine Co.; Peen Rite, Inc.; Pell Development Company; Petoseed Company; Petrol Transport, Inc.; Petrominerals Corp.; Pfizer; Pharm-Eco Laboratories, Inc.; Pick-A-Part Auto Recycling; Pirelli Cable; Placentia-Yorba Linda Unified School District; Pomona Valley Hospital Medical Center; Providence Health & Services; Public Service Marine, Inc.; Pure Fishing, Inc.; Quality Heat Treating; R E Hazard Contracting Company; R F White Company, Inc.; R&G Sloane Maintenance; Rally Chevrolet; Ramser Development Company; Red Lions Inn; Reid Metal Finishing; Richmond Technology; Roadway Express; Rossi Enterprises; S&P Company; Santa Barbara New Press; Santa Clara University; Schurgin Development Company; Sea World; Security Pacific Bank; SESCO; Setzer Forest Products, Inc.; Sierra Pacific Power Co.; Sonoco Products Company; SPS Technologies; State of Arizona; Superior Metal Finishing, Inc.; Telic Corporation; The E.W. Scripps Company, as successor to New Chronicle; The Toro Company; Thoratec Laboratories Corporation; Time Warner, Inc. including its former subsidiaries, Warner Music Group Inc., Westland Graphics Inc., Allied Record Company & Allied Record Company.; True Value Hardware Simi Valley; TW Graphics; U S Divers (USD Corp); United Oil Company; UVP, Inc.; Ventura Townehouse; Ventura Transfer Company; Vulcan Materials Company; Weatherford BMW; Weber Nameplate; Williams Bros Market; Winonics, Inc.; Winters Industrial Cleaning; XIK, LLC a Delaware LLC, as successor by merger to Arwood Corporation; Zep, Inc.

Dated: June 17, 2016.

Enrique Manzanilla,

Director, Superfund Division, U.S. EPA Region IX.

[FR Doc. 2016–15131 Filed 6–24–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1159]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 26, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1159.

Title: Part 27—Miscellaneous Wireless Communications Services in the 2.3 GHz Band.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents and Responses: 158 respondents and 2,406 responses.

Estimated Time per Response: 0.5–40 hours.

Frequency of Response: Recordkeeping requirement, Third Party Disclosure, and on occasion and quarterly reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is 47 U.S.C. 154, 301, 302(a), 303, 309, 332, 336, and 337 unless otherwise noted.

Total Annual Burden: 24,714 hours.

Annual Cost Burden: $546,450.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information filed by Wireless Communications Service (WCS) licensees in support of their construction notifications will be used to determine whether licensees have complied with the Commission's performance benchmarks. Further, the information collected by licensees in support of their coordination obligations will help avoid harmful interference to Satellite Digital Audio Radio Service (SDARS), Aeronautical Mobile Telemetry (AMT) and Deep Space Network (DSN) operations in other spectrum bands.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–15080 Filed 6–24–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10082 Temecula Valley Bank, Temecula, California

Notice is Hereby Given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Temecula Valley Bank, Temecula, California ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Temecula Valley Bank on July 17, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Federal Deposit Insurance Corporation.

Dated: June 22, 2016.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–15103 Filed 6–24–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, June 30, 2016 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Draft Advisory Opinion 2016–05: Huckabee for President, Inc.

Proposed Statement of Policy Regarding the Public Disclosure of Closed Enforcement Files

Revisions to Forms

REG 2013–01: Draft Notice of Proposed Rulemaking on Technological Modernization

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–15317 Filed 6–23–16; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 23, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Mackinac Financial Corporation, Manistique, Michigan*; to acquire 100 percent of Niagara Bancorporation, Inc., Niagara, Wisconsin, and thereby indirectly acquire The First National Bank of Niagara, Niagara, Wisconsin.

Board of Governors of the Federal Reserve System, June 22, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–15120 Filed 6–24–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 13, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Duke Trust and Susan K. McMurry, both of Casper, Wyoming;* to acquire voting shares of Jonah Bankshares, and thereby indirectly acquire voting shares of Jonah Bank of Wyoming, both of Casper, Wyoming.

Board of Governors of the Federal Reserve System, June 22, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–15119 Filed 6–24–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16RZ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

An Assessment of the State Public Health Actions ("1305") Program—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2013, the NCCDPHP developed a new program funding opportunity to support states in the design and implementation of strategies to reduce complications from multiple chronic diseases and associated risk factors. The funding opportunity was announced as "*State Public Health Actions to Prevent and Control Diabetes, Heart Disease, Obesity and Associated Risk Factors and Promote School Health,*" CDC–RFA–DP13–1305, and is hereafter referred to as "State Public Health Actions 1305." This new five-year cooperative agreement supports state health departments in an important transition from funding and implementing four separate categorical areas (*i.e.*, diabetes; heart disease and stroke; nutrition, physical activity, and obesity; and school health) to working collaboratively across categorical areas to plan and implement cross-cutting initiatives. This cross-cutting approach is essential for supporting activities to prevent chronic disease and risk factors—particularly multiple chronic conditions.

Through this cooperative agreement, CDC currently provides over $100 million to state health departments in all 50 United States and the District of Columbia. Due to the funding, complexity, coordination, and collaboration needed to implement State Public Health Actions 1305, there are a number of semi-annual and annual reporting requirements related to categorical spending, chronic disease outcomes, efficiencies, and accomplishments. These routine reporting requirements allow CDC to monitor awardee progress towards programmatic goals, but do not collect specific information about the processes that support program implementation plans.

The overall evaluation of State Public Health Actions 1305 examines the efficiency and effectiveness of the program to provide accountability, improve programs, expand practice-based evidence, and demonstrate health outcomes. An important component of assessing efficiency and effectiveness of the program is examining synergy. Synergy occurs when collaboration, coordination, alignment, and a combination of inputs and activities (*i.e.*, the assets and skills of all the participating partners) produce outputs and outcomes greater than those that would have occurred if they had been used separately.

CDC proposes to conduct an assessment to better understand synergy within and across State Public Health Actions 1305 funded programs. The assessment is designed to examine changes in processes; organizational structure; capacity; states' ability to implement a coordinated approach across the different chronic disease areas; challenges and benefits; and measurable positive outcomes.

CDC plans to administer a web-based survey to health departments receiving funding through the State Public Health Actions 1305 cooperative agreement, including 50 states and the District of Columbia. CDC plans to administer the survey in 2016 (program year 4) and 2018 (program year 5) to explore changes in partnerships and synergy throughout the 5-year cooperative agreement. Surveys will be administered to health department staff directly involved in planning and/or implementation of the State Public Health Actions 1305 program, including principal investigators, chronic disease directors, program evaluators, epidemiologists, and program staff with subject matter expertise in one or more of the four categorical areas. CDC will recruit approximately 8 individuals from each funded program for a total of approximately 408 respondents.

CDC will use survey findings to (1) inform future CDC technical assistance provision to State Public Health Actions 1305 funded programs, and (2) inform future cross-cutting, coordinated funding models. In addition, findings will complement existing routine reporting by gathering information about the specific processes that support program implementation plans. Findings will be disseminated via grantee webinars, grantee annual meetings, reports to CDC leadership, and U.S. Congressional reports.

OMB approval is requested for two years. Participation is voluntary and there are no costs to respondents other than their time. The total estimated burden hours are 306.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Health Department Staff	State Synergy Survey	408	1	45/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–15117 Filed 6–24–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0639]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

EEOICPA Special Exposure Cohort Petitions (OMB No. 0920–0639 exp. 7/31/2016)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384–7385 [1994, supp. 2001] was enacted. The Act established a compensation program to provide a lump sum payment of $150,000 and medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation for certain survivors of these covered employees. This program has been mandated to be in effect until Congress ends the funding.

Among other duties, the Department of Health and Human Services (HHS) was directed to establish and implement procedures for considering petitions by classes of nuclear weapons workers to be added to the "Special Exposure

Cohort" (the "Cohort"). In brief, EEOICPA authorizes HHS to designate such classes of employees for addition to the Cohort when NIOSH lacks sufficient information to estimate with sufficient accuracy the radiation doses of the employees, and if HHS also finds that the health of members of the class may have been endangered by the radiation dose the class potentially incurred. HHS must also obtain the advice of the Advisory Board on Radiation and Worker Health (the "Board") in establishing such findings. On May 28, 2004, HHS issued a rule that established procedures for adding such classes to the Cohort (42 CFR part 83). The rule was amended on July 10, 2007.

The HHS rule authorizes a variety of respondents to submit petitions. Petitioners are required to provide the information specified in the rule to qualify their petitions for a complete evaluation by HHS and the Board. HHS has developed two forms to assist the petitioners in providing this required information efficiently and completely. Form A is a one-page form to be used by EEOICPA claimants for whom NIOSH has attempted to conduct dose reconstructions and has determined that available information is not sufficient to complete the dose reconstruction. Form B, accompanied by separate instructions, is intended for all other petitioners. Forms A and B can be submitted electronically as well as in hard copy. Respondent/petitioners should be aware that HHS is not requiring respondents to use the forms. Respondents can choose to submit petitions as letters or in other formats, but petitions must meet the informational requirements stated in the rule. NIOSH expects, however, that all petitioners for whom Form A would be appropriate will actually use the form, since NIOSH will provide it to them upon determining that their dose reconstruction cannot be completed and encourage them to submit the petition. NIOSH expects the large majority of petitioners for whom Form B would be appropriate will also use the form, since it provides a simple, organized format for addressing the informational requirements of a petition.

NIOSH will use the information obtained through the petition for the following purposes: (a) Identify the petitioner(s), obtain their contact information, and establish that the petitioner(s) is qualified and intends to petition HHS; (b) establish an initial definition of the class of employees being proposed to be considered for addition to the Cohort; (c) determine whether there is justification to require HHS to evaluate whether or not to designate the proposed class as an addition to the Cohort (such an evaluation involves potentially extensive data collection, analysis, and related deliberations by NIOSH, the Board, and HHS); and, (d) target an evaluation by HHS to examine relevant potential limitations of radiation monitoring and/or dosimetry-relevant records and to examine the potential for related radiation exposures that might have endangered the health of members of the class.

Finally, under the rule, petitioners may contest the proposed decision of the Secretary to add or deny adding classes of employees to the cohort by submitting evidence that the proposed decision relies on a record of either factual or procedural errors in the implementation of these procedures. NIOSH estimates that the time to prepare and submit such a challenge is 5 hours. Because of the uniqueness of this submission, NIOSH is not providing a form. The submission will typically be in the form of a letter to the Secretary.

The estimated annual Burden Hours are 41. There are no costs to respondents unless a respondent/petitioner chooses to purchase the services of an expert in dose reconstruction, an option provided for under the rule.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Petitioners	Form A 42 CFR 83.9	2	1	3/60
	Form B 42 CFR 83.9	5	1	5
Petitioners using a submission format other than Form B (as permitted by rule).	42 CFR 83.9	1	1	6
Petitioners Appealing final HHS decision (no specific form is required).	42 CFR 83.18	2	1	5
Claimant authorizing a party to submit petition on his/her behalf.	Authorization Form 42 CFR 83.7.	3	1	3/60

Jeffrey M. Zirger,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–15087 Filed 6–24–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16LL]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Enhancing HIV Prevention Communication and Mobilization Efforts through Strategic Partnerships—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In an effort to refocus attention on domestic HIV and AIDS, CDC launched the Act Against AIDS (AAA) initiative in 2009 with the White House and the U.S. Department of Health and Human Services. AAA is a multifaceted national communication initiative that supports reduction of HIV incidence in the U.S. through multiple, concurrent communication and education campaigns for a variety of audiences including, the general public, populations most affected by HIV and health care providers. All campaigns support the comprehensive HIV prevention efforts of CDC and the National HIV/AIDS Strategy.

Within this context, the CDC's Division of HIV/AIDS Prevention (DHAP) is implementing various partnership activities to increase HIV awareness among the general public, reduce new HIV infections among disproportionately impacted populations, and improve health outcomes for people living with HIV and AIDS in United States and its territories. For example, DHAP is funding the "Enhancing HIV Prevention Communication and Mobilization Efforts through Strategic Partnerships" program. Partners funded under the partnership program will (1) support the dissemination of Act Against AIDS (AAA) campaign materials, messaging, and other CDC resources that support HIV prevention and (2) implement national engagement efforts focusing on HIV prevention and awareness. Partners represent civil, media, and LGBT-focused organizations.

In addition, DHAP will continue to support the Business Responds to AIDS (BRTA) program. Founded in 1992, the purpose of the BRTA program is to engage and support the private sector in promoting HIV education, awareness, and policies in the workplace. This partnership between CDC, business, labor, and the public health sector aims to encourage businesses to implement HIV/AIDS policies and education programs in the workplace with the overarching goal of increasing public understanding of, involvement in, and support for HIV prevention. Other partnership efforts serve the same purpose: To increase HIV awareness among the general public, reduce new HIV infections among disproportionately impacted populations, and improve health outcomes for people living with HIV and AIDS in the United States and its territories.

The project will evaluate the extent to which activities implemented by partners meet the initiative's goals for disseminating, communicating, and engaging the public in HIV prevention and education activities. We will collect information from partners on their activities for disseminating HIV messages through materials distribution at national and local events, media and advertising, HIV testing facilitation, and formation and coordination of strategic partnerships; barriers and facilitators to implementation of these activities, and factors that may help contextualize their progress towards meeting the initiative's goals; and their involvement in promoting HIV education, awareness, and policies in their organization. We will collect this information through these five sources: (a) Metrics Database: Partners will be required to report quarterly data to CDC and CDC's evaluation contractor through a metrics database. (b) Biannual key informant interviews: The point of contacts from some partner organizations will be interviewed twice yearly via telephone. (c) Interim Progress Reports: Partners will complete a standardized progress report on a biannual basis via a user-friendly electronic form. The progress reports will gather information on key successes, facilitators and barriers, and major achievements. (d) Partner Survey: Partners will complete a brief online survey to assess their involvement in promoting HIV education, awareness, and policies in their organization. (e) Partnerships Activities Form: Partners may be asked to complete a brief electronic form to provide information on each partner activity that they complete. The form will collect information on information such as the type of event, the audience, and key highlights; the number of HIV tests administered (if any) and the number of preliminary positives; the number and type of materials distributed. This information will allow CDC to know what partners are doing to advance HIV prevention and education, and how CDC can alter their partnership efforts to facilitate HIV prevention and education in the future. The organization (and not the individual) will be the unit of analysis. As such, no personally individually identifiable information will be collected.

There is no cost to participants other than their time. The total estimated annualized burden hours are 5,083.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
*6Partner Organization	Metrics Database	50	4	18
Partner Organization	Key Informant Interview Guide	25	2	1
Partner Organization	Interim Progress Report	25	2	8
Partner Organization	Partner Survey & Screener	300	1	40/60
Partner Organization	Partnership Activities Form	500	4	25/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–15116 Filed 6–24–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–OGM–PPR-Form B—Program Indicators.

OMB No.: 0970–0406.

Description: The Office of Grants Management (OGM), in the Administration for Children and families (ACF) is proposing the collection of program performance data for ACF's discretionary grantees. To collect this data OGM has developed a form from the basic template of the OMB-approved reporting format of the Program Performance Report. OGM will use this data to determine if grantees are proceeding in a satisfactory manner in meeting the approved goals and objectives of the project, and if funding should be continued for another budget period.

The requirement for grantees to report on performance is OMB grants policy. Specific citations are contained in: (1) 2 CFR 215 Uniform Administrative Requirements, cost Principles, and Audit Requirements for Federal Awards and (2) 45 CFR 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Department of Health and Human Services Awards.

Respondents: All ACF Discretionary Grantees. State governments, Native American Tribal governments, Native American Tribal Organizations, Local Governments, and Nonprofits with or without 501 (c)(3) status with the IRS.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–OGM–PPR–B	6000	1	1	6000

Estimated Total Annual Burden Hours: 6000.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–15094 Filed 6–24–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Medical Support Notice

OMB No.: 0970–0222

Description: The National Medical Support Notice (NMSN) is a two-part document that requires information from State child support enforcement agencies, employers, and health plan administrators to assist in enforcing health care coverage provisions in a child support order. The Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) developed and maintains part A of the NMSN, which is sent to an obligor's employer for completion; the Department of Labor (DOL) developed and maintains part B of the NMSN, which is provided to health care administrators following completion of part A.

DOL revised part B to conform with changes to the currently approved part A and is seeking a three-year approval from OMB. To avoid burdening the State child support enforcement agencies with potential reprogramming at varying times due to future changes in part A or B, ACF is resubmitting an unchanged information collection package and requesting an extension to the current OMB approval of NMSN part A to synchronize the expiration date with NMSN part B.

Respondents: State child support enforcement agencies, employers, and health plan administrators.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
National Medical Support Notice–Part A	54	76,499	.17 hours	702,261

Estimated Total Annual Burden Hours: 702,261.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of

Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–15046 Filed 6–24–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1174]

Special Protocol Assessment; Draft Guidance for Industry; Extension of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of the comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the notice of availability, published in the **Federal Register** of May 4, 2016 (81 FR 26799), announcing the draft guidance for industry entitled "Special Protocol Assessment." We are taking this action due to maintenance on the Federal eRulemaking portal from July 1 through July 5, 2016.

DATES: Submit either electronic or written comments by July 19, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1174 for "Special Protocol Assessment; Draft Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amalia Himaya, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6439, Silver Spring, MD 20993–0002, 301–796–0700; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 4, 2016 (81 FR 26799), FDA published a notice of availability.

Interested persons were originally given until July 5, 2016, to comment on the draft guidance for industry entitled "Special Protocol Assessment."

From July 1 through July 5, 2016, the Federal eRulemaking Portal, *http://www.regulations.gov,* is undergoing maintenance. We are, therefore, extending the comment period for the draft guidance for industry entitled "Special Protocol Assessment." The extended comment period will close on July 19, 2016.

Dated: June 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15106 Filed 6–24–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1594]

Quality Metrics Technical Conformance Guide—Technical Specifications Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comment.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a Technical Specifications Document entitled "Quality Metrics Technical Conformance Guide, Version 1.0." This Guide provides technical recommendations for the submission of quality metric data. It serves as the technical reference for implementation of the draft FDA guidance for industry, when finalized, on "Request for Quality Metrics," dated July 28, 2015.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 26, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1594 for "Quality Metrics Technical Conformance Guide—Technical Specifications Document." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guide to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Tara Gooen Bizjak, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2109, Silver Spring, MD 20993–0002, *Tara.Gooen@fda.hhs.gov*, 301–796–3257; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a Technical Specifications Document for industry entitled "Quality Metrics Technical Conformance Guide, Version 1.0." This Guide supplements the draft FDA guidance for industry on "Request for Quality Metrics," available at *http://www.fda.gov/downloads/drugs/guidancecompliance regulatoryinformation/guidances/ucm455957.pdf*, and provides recommendations about submission of records and other information that will support FDA's calculation of quality metrics as part of the process validation lifecycle and pharmaceutical quality system (PQS) assessment. Since publication of "Pharmaceutical Current Good Manufacturing Practices (CGMPs) for the 21st Century—A Risk Based Approach" in 2004,[1] CDER has continued to promote its vision of a maximally efficient, agile, flexible manufacturing sector that reliably produces high-quality drug products without extensive regulatory oversight. The draft guidance for industry on "Request for Quality Metrics" and this technical reference document continues the outreach policy of FDA so as to ensure successful implementation of CDER's objectives outlined in the 21st Century publication. The objectives of CDER's metric program can best be achieved through collaboration and mutual recognition of standards for metric indicators and data exchange/reporting.

The purpose of this Guide is to provide technical recommendations for the submission of quality metric data. It is intended to ensure clear expectations for industry on the submission of quality metric data as described in the "Request for Quality Metrics" draft guidance. We note that the comment period for that draft guidance closed in November 2015 and that the comments that were received are undergoing evaluation. This Guide is intended to be a companion document to the July 28, 2015, draft guidance. There may be modifications to the draft guidance and this guide based on our evaluation of the submitted comments. Our goal is to institute efficient regulatory review, compliance oversight, and inspection policies established on risk-based methods, including quality metric reporting. This Guide is intended to facilitate collaboration between industry and FDA regarding the best methodologies to address all issues of implementation. Due to the inherent variability among reporting establishments' implementation of the process validation lifecycle and PQS assessment, it is difficult to identify and compare quality issues between firms. As such, FDA recognizes the importance of industry input and agreement regarding standardized indicators of manufacturing and product quality.

This guide is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The current version of the guide will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guide refers to previously approved collections of information that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Relevant to this collection of information, FDA published a document entitled "Request for Quality Metrics; Notice of Draft Guidance and Public Meeting; Request for Comments" in the **Federal Register** of July 28, 2015 (80 FR 44973). In Section IV, "Paperwork Reduction Act of 1995," FDA estimated the burden that would cover the use of technical standards discussed in this draft guide.

III. Electronic Access

Persons with access to the Internet may obtain the draft guide at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *http://www.regulations.gov.*

Dated: June 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15099 Filed 6–24–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 043

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA Recognized Consensus Standards). This publication, entitled "Modifications to the List of Recognized Standards, Recognition List Number: 043" (Recognition List Number: 043), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit electronic or written comments concerning this document at any time. These modifications to the list of recognized standards are effective June 27, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2004–N–0451 for "Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 043." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 043.

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[1] *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/Manufacturing/QuestionsandAnswersonCurrentGoodManufacturingPracticescGMPforDrugs/ucm137175.htm* (Fall 2004) (last visited: March 17, 2016).

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of Recognition List Number: 043 is available on the Internet at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 043 modifications and other standards related information. Submit written requests for a single hard copy of the document entitled "Modifications to the List of Recognized Standards, Recognition List Number: 043" to the Division of Industry and Consumer Education, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149.

FOR FURTHER INFORMATION CONTACT: Scott A. Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5514, Silver Spring, MD 20993, 301–796–6287, *standards@cdrh.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled "Recognition and Use of Consensus Standards." The notice described how FDA would implement its standard recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register**, can be accessed at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.*

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains hypertext markup language (HTML) and portable document format (PDF) versions of the list of FDA Recognized Consensus Standards. Both versions are publicly accessible at the Agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 043

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency will recognize for use in premarket submissions and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA will use the term "Recognition List Number: 043" to identify these current modifications.

In table 1, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, if applicable; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III, FDA lists modifications the Agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
		A. Anesthesia	
1–91	1–116	ISO 5360 Fourth edition 2016–02–15 Anaesthetic vaporizers—Agent specific filling systems.	Withdrawn and replaced with newer version.
		B. Cardiovascular	
3–135		ISO/TS 12417–1:2011 Cardiovascular implants and extracorporeal systems—Vascular device-drug combination products.	Withdrawn.

Table 1—Modifications to the List of Recognized Standards—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
3–136		AAMI/ANSI/ISO TIR 12417:2011 Cardiovascular implants and extracorporeal systems—Vascular device-drug combination products.	Withdrawn.
		C. Dental/Ear, Nose, and Throat (ENT)	
4–86		ANSI/ADA 38–2000 (R2015) Metal-Ceramic Systems	Reaffirmation.
4–139		ANSI/ADA 48–2004 (R2015) Visible Light Curing Units	Reaffirmation.
4–146	4–227	ISO 22674 Second edition. 2016–01–15 Dentistry—Metallic materials for fixed and removable restorations and appliances.	Withdrawn and replaced with newer version.
4–166	4–228	ANSI/ASA S3.20–2015 (Revision of ANSI S3.20–1995) AMERICAN NATIONAL STANDARD: Bioacoustical Terminology.	Withdrawn and replaced with newer version.
4–196		ANSI/ADA 69–2010 (R2015) Dental Ceramics	Reaffirmation.
4–202		ANSI/ADA 58–2010 (R2015) Root Canal Files, Type H (Hedstrom)	Reaffirmation.
		D. General I (Quality Systems/Risk Management) (QS/RM)	
5–36		ISO TR 16142 Second edition. 2006–1–15, Technical information report: Medical devices—Guidances on the selection of standards in support of recognized essential principles of safety and performance of medical devices.	Withdrawn. See 5–105.
5–40		ISO 14971 Second edition. 2007–03–01 Medical devices—Application of risk management to medical devices.	Relevant guidance.
5–57		AAMI/ANSI HE75:2009/(R)2013 Human factors engineering—Design of medical devices.	Relevant guidance.
5–67		AAMI/ANSI/IEC 62366:2007/(R) 2013 Medical devices—Application of usability engineering to medical devices.	Transition period.
5–70		AAMI/ANSI/ISO 14971:2007/(R) 2010 (Corrected 4 October 2007) Medical devices—Application of risk management to medical devices.	Relevant guidance.
5–86		IEC 60601–1–8 Edition 2.0. 2006–10 Medical electrical equipment—Part 1–8: General requirements for basic safety and essential performance—Collateral standard: General requirements, tests and guidance for alarm systems in medical electrical equipment and medical electrical systems.	Relevant guidance.
5–87		IEC 62366 Edition 1.1 2014–01 Medical devices—Application of usability engineering to medical devices.	Transition period.
5–89		IEC 60601–1–6 Edition 3.1 2013–10 Medical electrical equipment—Part 1–6: General requirements for basic safety and essential performance—Collateral standard: Usability.	Relevant guidance.
5–92		AAMI/ANSI/IEC 60601–1–8:2006 & A1:2012 Medical electrical equipment—Part 1–8: General requirements for basic safety and essential performance—Collateral standard: General requirements, tests and guidance for alarm systems in medical electrical equipment and medical electrical systems.	Relevant guidance.
5–93		AAMI CN3:2014 Small-bore connectors for liquids and gases in healthcare applications—Part 3: Connectors for enteral applications.	Withdrawn. See 5–106.
5–95		IEC 62366–1 Edition 1.0 2015–02 Medical devices—Part 1: Application of usability engineering to medical devices.	Transition period, Relevant guidance.
5–96		AAMI/ANSI/IEC 62366–1:2015 Medical devices—Part 1: Application of usability engineering to medical devices.	Transition period, Relevant guidance.
5–101		AAMI CN6:2015 Small-bore connectors for liquids and gases in healthcare applications—Part 6: Connectors for neuraxial applications.	Withdrawn. See 5–108.
		E. General II (Electrical Safety/Electromagnetic Compatibility) (ES/EMC)	
19–1		IEC 60601–1–2 Edition 3. 2007–03, Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic compatibility—Requirements and tests.	Transition period.
19–2		AAMI/ANSI/IEC 60601–1–2:2007/(R)2012 Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic compatibility—Requirements and tests.	Transition period.
19–6		IEC 60601–1–11 Edition 1.0. 2010–04 Medical electrical equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral standard: Requirements for medical electrical equipment and medical electrical systems used in the home healthcare environment [including: Technical Corrigendum 1 (2011)].	Relevant guidance.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard[1]	Change
19–7		AAMI/ANSI HA 60601–1–11:2011 Medical electrical equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral standard: Requirements for medical electrical equipment and medical electrical equipment and medical electrical systems used in the home healthcare environment (IEC 60601–1–11:2010 Mod).	Relevant guidance.
19–8		IEC 60601–1–2 Edition 4.0. 2014–02, Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic disturbances—Requirements and tests.	Transition period.
19–12		AAMI/ANSI/IEC 60601–1–2:2014, Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic disturbances—Requirements and tests.	Transition period.
19–14		IEC 60601–1–11 Edition 2.0. 2015–01 Medical electrical equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral standard: Requirements for medical electrical equipment and medical electrical systems used in the home healthcare environment.	Relevant guidance.
19–15		IEC 60601–1–12 Edition 1.0. 2014–06 Medical electrical equipment—Part 1–12: General requirements for basic safety and essential performance—Collateral standard: Requirements for medical electrical equipment and medical electrical systems intended for use in the emergency medical services environment.	Relevant guidance.
		F. General Hospital/General Plastic Surgery (GH/GPS)	
6–15	6–362	ISO/FDIS 7864 Fourth edition 2016–XX–XX Sterile hypodermic needles for single use—Requirements and test methods.	Withdrawn and replaced with newer version.
6–132	6–363	ISO 11810 Second edition 2015–12–15 Lasers and laser-related equipment—Test method and classification for the laser resistance of surgical drapes and/or patient protective covers—Primary ignition, penetration, flame spread and secondary ignition.	Withdrawn and replaced with newer version.
6–145		ASTM D3578—05 (Reapproved 2015) Standard Specification for Rubber Examination Gloves.	Reaffirmation.
6–168		ASTM D3577—09 (Reapproved 2015) Standard Specification for Rubber Surgical Gloves.	Reaffirmation.
6–175		ASTM D5151—06 (Reapproved 2015) Standard Test Method for Detection of Holes in Medical Gloves.	Reaffirmation.
6–183		ASTM D5250—06 (Reapproved 2015) Standard Specification for Poly(vinyl chloride) Gloves for Medical Application.	Reaffirmation.
6–202		ISO 11810–2 First edition. 2007–05–01, Lasers and laser-related equipment—Test method and classification for the laser-resistance of surgical drapes and/or patient-protective covers—Part 2: Secondary ignition.	Withdrawn. See 6–362.
6–204	6–364	ISO 8537 Third edition. 2016–03–15 Sterile single-use syringes, with or without needle, for insulin.	Withdrawn and replaced with newer version.
6–244		ASTM D6319—10 (Reapproved 2015) Standard Specification for Nitrile Examination Gloves for Medical Application.	Reaffirmation.
6–277	6–365	ISO 11040–4 Third edition. 2015–04–01 Prefilled syringes—Part 4: Glass barrels for injectables and sterilized subassembled syringes ready for filling.	Withdrawn and replaced with newer version.
6–302	6–366	ISO/FDIS 9626 Second edition 2016–XX–XX Stainless steel needle tubing for the manufacture of medical devices—Requirements and test methods.	Withdrawn and replaced with newer version.
6–343	6–367	USP 39–NF 34:2016, Sodium Chloride Irrigation	Withdrawn and replaced with newer version.
6–344	6–368	USP 39–NF 34:2016, Sodium Chloride Injection	Withdrawn and replaced with newer version.
6–345	6–369	USP 39–NF 34:2016, Nonabsorbable Surgical Suture	Withdrawn and replaced with newer version.
6–346	6–370	USP 39–NF 34:2016, <881> Tensile Strength	Withdrawn and replaced with newer version.
6–347	6–371	USP 39–NF 34:2016, <861> Sutures—Diameter	Withdrawn and replaced with newer version.
6–348	6–372	USP 39–NF 34:2016, <871> Sutures—Needle Attachment	Withdrawn and replaced with newer version.
6–349	6–373	USP 39–NF 34:2016, Sterile Water for Irrigation	Withdrawn and replaced with newer version.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard[1]	Change
6–350	6–374	USP 39–NF 34:2016, Heparin Lock Flush Solution	Withdrawn and replaced with newer version.
6–351	6–375	USP 39–NF 34:2016, Absorbable Surgical Suture	Withdrawn and replaced with newer version.
		G. In Vitro Diagnostics (IVD)	
7–198	7–261	CLSI M23 Development of In Vitro Susceptibility Testing Criteria and Quality Control Parameters, 4th edition.	Withdrawn and replaced with newer version.
7–218	7–262	CLSI M45 Methods for Antimicrobial Dilution and Disk Susceptibility Testing of Infrequently Isolated or Fastidious Bacteria; Approved Guideline, 3rd edition.	Withdrawn and replaced with newer version.
7–256	7–263	CLSI M100–S26 Performance Standards for Antimicrobial Susceptibility Testing, 26th edition.	Withdrawn and replaced with newer version.
		H. Materials	
8–217		ASTM F620–11(Reapproved 2015) Standard Specification for Titanium Alloy Forgings for Surgical Implants in the Alpha Plus Beta Condition.	Reaffirmation.
8–220	8–421	ASTM F629–11 Standard Practice for Radiography of Cast Metallic Surgical Implants.	Withdrawn and replaced with newer version.
8–381	8–422	ASTM F2052–15 Standard Test Method for Measurement of Magnetically Induced Displacement Force on Medical Devices in the Magnetic Resonance Environment.	Withdrawn and replaced with newer version.
		I. Orthopedic	
11–168	11–305	ASTM F1781–15 Standard Specification for Elastomeric Flexible Hinge Finger Total Joint Implants.	Withdrawn and replaced with newer version.
11–171	11–306	ASTM F1814–15 Standard Guide for Evaluating Modular Hip and Knee Joint Components.	Withdrawn and replaced with newer version.
11–203		ASTM F1541–02 (Reapproved 2015) Standard Specification and Test Methods for External Skeletal Fixation Devices.	Reaffirmation.
11–271		ASTM F2180–02 (Reapproved 2015) Standard Specification for Metallic Implantable Strands and Cables.	Reaffirmation.
		J. Radiology	
12–153	12–297	ANSI/IESNA RP–27.1–15 Recommended Practice for Photobiological Safety for Lamps and Lamp Systems—General requirements.	Withdrawn and replaced with newer version.
12–158	12–298	NEMA MS 10–2010 Determination of Local Specific Absorption Rate (SAR) in Diagnostic Magnetic Resonance Imaging.	Withdrawn and replaced with newer version.
12–207		IEC 60601–2–33 Ed. 3.0 2010 Medical electrical equipment—Part 2–33: Particular requirements for the basic safety and essential performance of magnetic resonance equipment for medical diagnosis.	Transition period extended.
12–209		IEC 60601–2–37 Ed. 2.0:2007 Medical electrical equipment—Part 2–37: Particular requirements for the basic safety and essential performance of ultrasonic medical diagnostic and monitoring equipment.	Recognition restored with transition period.
12–216	12–299	IEC 62563–1 Ed.1.1 2016 Medical electrical equipment—Medical image display systems—Part 1: Evaluation methods.	Withdrawn and replaced with newer version with transition.
12–236		IEC 60601–2–45 Ed. 3.0: 2011 Medical electrical equipment—Part 2–45: Particular requirements for the basic safety and essential performance of mammographic X-ray equipment and mammographic stereotactic devices.	Recognition restored with transition period.
12–238	12–300	NEMA Digital Imaging and Communications in Medicine (DICOM) set PS3.1–3.20 (2016).	Withdrawn and replaced with newer version.
12–254	12–301	IEC 60601–2–8 Ed. 2.1 b:2015 Medical electrical equipment—Part 2–8: Particular requirements for the basic safety and essential performance of therapeutic X-ray equipment operating in the range 10 kV to 1 MV.	Withdrawn and replaced with newer version.
12–256		IEC 60601–2–44 Ed. 3.1 2012 Medical electrical equipment—Part 2–44: Particular requirements for the basic safety and essential performance of X-ray equipment for computed tomography.	Transition extended.
12–257		IEC 60601–2–44 Ed. 3.0 2009 Medical electrical equipment—Part 2–44: Particular requirements for the basic safety and essential performance of X-ray equipment for computed tomography.	Transition extended.
12–271		IEC 60601–2–33 Ed. 3.1:2013 Medical electrical equipment—Part 2–33: Particular requirements for the basic safety and essential performance of magnetic resonance equipment for medical diagnosis.	Recognition restored with transition period.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard[1]	Change
12–274		IEC 60601–2–54 Ed. 1.0:2009 Medical electrical equipment—Part 2–54: Particular requirements for the basic safety and essential performance of X-ray equipment for radiography and radioscopy [Including: Technical Corrigendum 1: 2010 and Technical Corrigendum 2:2011].	Recognition restored with transition period.
12–293		IEC 60601–2–37 Ed. 2.1:2015 Medical electrical equipment—Part 2–37: Particular requirements for the basic safety and essential performance of ultrasonic medical diagnostic and monitoring equipment.	Transition period.
12–294		IEC 60601–2–45 Ed. 3.1: 2015 Medical electrical equipment—Part 2–45: Particular requirements for the basic safety and essential performance of mammographic X-ray equipment and mammographic stereotactic devices.	Transition period.
12–295		IEC 60601–2–33 Ed. 3.2 b:2015 Medical electrical equipment—Part 2–33: Particular requirements for the basic safety and essential performance of magnetic resonance equipment for medical diagnosis.	Transition period extended.
12–296		IEC 60601–2–54 Ed. 1.1:2015 Medical electrical equipment—Part 2–54: Particular requirements for the basic safety and essential performance of X-ray equipment for radiography and radioscopy.	Transition period.
		K. Sterility	
14–139	14–479	ISO 14644–1 Second edition 2015–12–15 Cleanrooms and associated controlled environments—Part 1: Classification of air cleanliness by particle concentration.	Withdrawn and replaced with newer version.
14–140	14–481	ISO 14644–2 Second edition 2015–12–15 Cleanrooms and associated controlled environments—Part 2: Monitoring to provide evidence of cleanroom performance related to air cleanliness by particle concentration.	Withdrawn and replaced with newer version.
14–283	14–482	ASTM F88/F88M—15 Standard Test Method for Seal Strength of Flexible Barrier Materials.	Withdrawn and replaced with newer version.
14–341	14–483	ISO/ASTM 52303 First edition 2015–07–15 Guide for absorbed-dose mapping in radiation processing facilities.	Withdrawn and replaced with newer version.
14–344		ASTM F2825—10 (Reapproved 2015) Standard Practice for Climatic Stressing of Packaging Systems for Single Parcel Delivery.	Reaffirmation.
14–378	14–484	ASTM F1929—15 Standard Test Method for Detecting Seal Leaks in Porous Medical Packaging by Dye Penetration.	Withdrawn and replaced with newer version.
14–466	14–485	USP 39–NF34:2016 <61> Microbiological Examination of Nonsterile Products: Microbial Enumeration Tests.	Withdrawn and replaced with newer version.
14–467	14–486	USP 39–NF34:2016 <71> Sterility Tests	Withdrawn and replaced with newer version.
14–468	14–487	USP 39–NF34:2016 <85> Bacterial Endotoxins Test	Withdrawn and replaced with newer version.
14–469	14–488	USP 39–NF34:2016 <161> Medical Devices-Bacterial Endotoxin and Pyrogen Tests.	Withdrawn and replaced with newer version.
14–470	14–489	USP 39–NF34:2016 Biological Indicator for Steam Sterilization, Self Contained.	Withdrawn and replaced with newer version.
14–471	14–490	USP 39–NF34:2016 Biological Indicator for Dry-Heat Sterilization, Paper Carrier.	Withdrawn and replaced with newer version.
14–472	14–491	USP 39–NF34:2016 Biological Indicator for Ethylene Oxide Sterilization, Paper Carrier.	Withdrawn and replaced with newer version.
14–473	14–492	USP 39–NF34:2016 Biological Indicator for Steam Sterilization, Paper Carrier.	Withdrawn and replaced with newer version.
14–474	14–493	USP 39–NF34:2016 <62> Microbiological Examination of Nonsterile Products: Tests for Specified Microorganisms.	Withdrawn and replaced with newer version.
14–475	14–494	USP 39–NF34:2016 <55> Biological Indicators—Resistance Performance Tests.	Withdrawn and replaced with newer version.
14–476	14–495	USP 39–NF34:2016 <1035> Biological Indicators for Sterilization	Withdrawn and replaced with newer version.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 2, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 043.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard[1]	Reference No. and date
	A. Cardiovascular	
3–142	Cardiovascular implants and extracorporeal systems—Cardiovascular absorbable implants.	ISO/TS 17137:2014.
3–143	Cardiovascular implants and extracorporeal systems—Vascular device-drug combination products.	ISO 12417 First edition 2015–10–01.
	B. General I (Quality Systems/Risk Management) (QS/RM)	
5–105	Medical devices—Recognized essential principles of safety and performance of medical devices—Part 1: General essential principles and additional specific essential principles for all non-IVD medical devices and guidance on the selection of standards.	ISO 16142–1 First edition 2016–03–01.
5–106	Small-bore connectors for liquids and gases in healthcare applications—Part 3: Connectors for enteral applications.	ISO/FDIS 80369–3 First edition 2016–02–04.
5–107	Small-bore connectors for liquids and gases in healthcare applications—Part 5: Connectors for limb cuff inflation applications.	IEC 80369–5: Edition 1.0 2016–03.
5–108	Small bore connectors for liquids and gases in healthcare applications—Part 6: Connectors for neuraxial applications.	ISO 80369–6 First edition. 2016–03–15.
	C. General Hospital/General Plastic Surgery (GH/GPS)	
6–376	Hypodermic needles for single use—Colour coding for identification	ISO/FDIS 6009 Fourth edition 2016–01–18.
6–377	Needle-based injection systems for medical use—Requirements and test methods—Part 5: Automated functions.	ISO 11608–5 First edition 2012–10–01.
6–378	Needle-based injection systems for medical use—Requirements and test methods—Part 7: Accessibility for persons with visual impairment.	ISO/FDIS 11608–7 First edition 2016–06–16.
	D. In Vitro Diagnostic	
7–264	Genomic Copy Number Microarrays for Constitutional Genetic and Oncology Applications, 1st edition.	MM21- Ed. 1.
	E. Materials	
8–423	Standard Guide for Extensively Irradiation-Crosslinked Ultra-High Molecular Weight Polyethylene Fabricated Forms for Surgical Implant Applications.	ASTM F2565–13.
8–424	Standard Specification for Ultra-High Molecular Weight Polyethylene Powder Blended With Alpha-Tocopherol (Vitamin E) and Fabricated Forms for Surgical Implant Applications.	ASTM F2695–12.
8–425	Standard Specification for Polyetherketoneketone (PEKK) Polymers for Surgical Implant Applications.	ASTM F2820–12.
8–426	Standard Specification for Acrylic Molding Resins for Medical Implant Applications.	ASTM F3087–15.
8–427	Standard Specification for Composition of Hydroxylapatite for Surgical Implants	ASTM F1185–03 (Reapproved 2014).
8–428	Standard Specification for Composition of Anorganic Bone for Surgical Implants	ASTM F1581–08 (Reapproved 2012).
8–429	Standard Specification for High Purity Calcium Sulfate Hemihydrate or Dihydrate for Surgical Implants.	ASTM F2224–09 (Reapproved 2014).
8–430	Implants for surgery—Ceramic materials based on yttria-stabilized tetragonal zirconia (Y–TZP).	ISO 13356:2015 Third edition. 2015–09–15.
8–431	Standard Practice for Reporting Data for Test Specimens Prepared by Additive Manufacturing.	ASTM F2971–13.
8–432	Standard Terminology for Additive Manufacturing-Coordinate Systems and Test Methodologies.	ISO/ASTM 52921–13 First edition 2013–06–01.
8–434	Additive manufacturing—General principles—Terminology	ISO/ASTM 52900 First edition 2015–12–15.
	F. Orthopedic	
11–307	Standard Practice for Determining Femoral Head Penetration into Acetabular Components of Total Hip Replacement Using Clinical Radiographs.	ASTM F2385–15.
11–308	Standard Test Method for Finite Element Analysis (FEA) of Metallic Orthopaedic Total Knee Femoral Components under Closing Conditions.	ASTM F3161–16.
11–309	Standard Specification for Medical Screwdriver Bits	ASTM F116–12.
11–310	Standard Specification for Intramedullary Reamers	ASTM F1611–00 (Reapproved 2013).
	G. Radiology	
12–302	Medical electrical equipment—Part 2–44: Particular requirements for the basic safety and essential performance of X-ray equipment for computed tomography.	IEC 60601–2–44 Ed. 3.2:2016.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard[1]	Reference No. and date
	H. Software/Informatics	
13–82	Application of risk management for IT networks incorporating medical—Application guidance—Part 2–6: Guidance for responsibility agreements.	AAMI/ISO TIR 80001–2–6:2014.
13–83	Principles for medical device security—Risk management	AAMI TIR 57:2016.
13–84	Health informatics—Point-of-care medical device communication—Part 10103: Nomenclature—Implantable device, cardiac.	ISO/IEEE 11073–10103 First edition 2014–03–01.
	I. Tissue Engineering	
15–45	Medical devices utilizing animal tissues and their derivatives—Part 1: Application of risk management.	ISO 22442–1 Second edition 2015–11–1.
15–46	Medical devices utilizing animal tissues and their derivatives—Part 2: Controls on sourcing, collection and handling.	ISO 22442–2 Second edition 2015–11–1.
15–47	Medical devices utilizing animal tissues and their derivatives—Part 3: Validation of the elimination and/or inactivation of viruses and transmissible spongiform encephalopathy (TSE) agents.	ISO 22442–3 First edition 2007–12–15.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the Agency's current list of FDA Recognized Consensus Standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm*. FDA will incorporate the modifications and revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often if necessary. Beginning with Recognition List 033, FDA no longer announces minor revisions to the list of recognized consensus standards such as technical contact person, devices affected, processes affected, Code of Federal Regulations citations, and product codes.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to *standards@cdrh.fda.gov*. To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of "Guidance on the Recognition and Use of Consensus Standards" by using the Internet. The Center for Devices and Radiological Health (CDRH) maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page, *http://www.fda.gov/MedicalDevices,* includes a link to standards-related documents including the guidance and the current list of recognized standards. After publication in the **Federal Register**, this notice announcing "Modification to the List of Recognized Standards, Recognition List Number: 043" will be available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm*. You may access "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards" at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards*.

Dated: June 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15100 Filed 6–24–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1170]

Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Drugs for Treatment; Draft Guidance for Industry; Extension of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of the comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the notice of availability, published in the **Federal Register** of May 4, 2016 (81 FR 26805), announcing the draft guidance for industry entitled "Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Drugs for Treatment." We are taking this action due to maintenance on the Federal eRulemaking portal from July 1 through July 5, 2016.

DATES: Submit either electronic or written comments by July 19, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–D–1170 for "Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Drugs for Treatment; Draft Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jeffrey Murray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6360, Silver Spring, MD 20993–0002, 301–796–1500.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 4, 2016 (81 FR 26805), FDA published a notice of availability.

Interested persons were originally given until July 5, 2016, to comment on the draft guidance for industry entitled "Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Drugs for Treatment."

From July 1 through July 5, 2016, the Federal eRulemaking Portal, *http://www.regulations.gov,* is undergoing maintenance. We are, therefore, extending the comment period for the draft guidance for industry entitled "Chronic Hepatitis C Virus Infection: Developing Direct-Acting Antiviral Drugs for Treatment." The extended comment period will close on July 19, 2016.

Dated: June 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15098 Filed 6–24–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than July 27, 2016.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Black Lung Clinics Program Performance Measures OMB No. 0915–0292–Extension

Abstract: HRSA's Federal Office of Rural Health Policy (FORHP), conducts an annual data collection of information for the Black Lung Clinics Program, which has been ongoing with OMB approval since 2004. The Black Lung Clinics Program seeks to reduce the morbidity and mortality associated with occupationally-related coal mine dust lung disease. Collecting this data provides HRSA with information on the extent to which each grantee is meeting the needs of these miners in their communities.

Need and Proposed Use of the Information: Data from the annual report provides quantitative information about the clinics, specifically: (a) The characteristics of the patients they serve (gender, age, disability level, occupation type); (b) the characteristics of services provided (medical encounters, non-medical encounters, benefits counseling, and outreach); and, (c) the number of patients served. This assessment enables HRSA to provide data required by Congress under the Government Performance and Results Act of 1993. It also ensures that funds are effectively used to provide services that meet the target population needs. HRSA does not plan to make any changes to the performance measures at this time.

Likely Respondents: Black Lung Clinics Program Grantees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Black Lung Clinics Program Measures	15	1	15	10	150
Total	15		15		150

Jason E. Bennett,
Director, Division of the Executive Secretariat.

[FR Doc. 2016–15092 Filed 6–24–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than July 27, 2016.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Sickle Cell Disease Treatment Demonstration Program—Quality Improvement Data Collection.

OMB No.: 0906–xxxx–NEW.

Abstract: In response to the growing need for resources and coordination of resources devoted to sickle cell disease and other hemoglobinopathies, the United States Congress, under Section 712 of the American Jobs Creation Act of 2004 (Pub. L. 108–357) (42 U.S.C. 300b–1 note), authorized a demonstration program for the prevention and treatment of sickle cell disease (SCD) to be administered by HRSA's Maternal and Child Health Bureau (MCHB) in the U.S. Department of Health and Human Services. The program is known as the *Sickle Cell Disease Treatment Demonstration Program* (SCDTDP). The SCDTDP is designed to improve access to services for individuals with sickle cell disease, improve and expand patient and provider education, and improve and expand the continuity and coordination of service delivery for individuals with sickle cell disease and sickle cell trait. The specific aims for the program are threefold: (1) Increase the number of providers treating persons with sickle cell disease, (2) increase the number of providers using evidence-based treatments in sickle cell disease, such as prescribing hydroxyurea, and (3) increase the number of providers knowledgeable about treating sickle cell disease and the number of sickle cell patients that are seen by providers knowledgeable about sickle cell disease.

To achieve the goals and objectives of the program, the SCDTDP uses quality improvement (QI) methods in a collective impact model which supports cross-sector collaboration for achieving measurable effects on major social issues. The collective impact model requires shared measurement which facilitates tracking progress in a standardized method to promote learning and enhance continuous improvement.

Need and Proposed Use of the Information: The purpose of the proposed data collection strategy is to implement a system to monitor the progress of MCHB-funded activities in improving care and health outcomes for individuals living with sickle cell disease/trait and meeting the goals of the SCDTDP. Each regional grantee site will be asked to report on a core set of evidence-based measures related to healthcare utilization among individuals with sickle cell disease and the quality of care of the SCD population.

The data collected for the SCDTDP will consist of administrative medical claims data collected from State Medicaid Programs and Medicaid Managed Care Organizations that administer Medicaid on behalf of states. The data is collected either for or by State Medicaid offices for delivery of services subject to Medicaid reimbursement.

The data collection strategy will provide an effective and efficient mechanism to do the following: (1) Assess the improvements in access to care for sickle cell patients provided by activities in the SCDTDP; (2) collect, coordinate, and distribute data, best practices, and findings from regional grantee sites to drive improvement on quality measures; (3) refine a common model protocol regarding the prevention and treatment of sickle cell disease; (4) examine/address barriers that individuals and families living with sickle cell disease face when accessing quality health care and health education; (5) evaluate the grantees' performance in meeting the objectives of the SCDTDP; and (6) provide HRSA and Congress with information on the overall progress of the program.

Likely Respondents: Four regional grantee sites funded by HRSA under the SCDTDP will be the respondents for this data collection activity and submit responses gathered from State Medicaid Offices and State Medicaid Managed Care Organizations.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
SCDTDP Data form	4	Range: 16–80	Range: 64–320	Range: 4–6	Range: 256–1920.
Total	4	....	Range: 64–320	....	Range: 256–1920.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–15091 Filed 6–24–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–New–30D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: July 27, 2016.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–New–30D for reference.

Information Collection Request Title: Teen Pregnancy Prevention (TPP) Tier 1B Design and Implementation Study

Abstract: The Office of Adolescent Health (OAH) is requesting an approval by OMB on a new information collection. For the TPP Tier 1B Design and Implementation Study, we will document how each of the 50 grantees funded under this grant program are scaling-up efforts to strengthen and expand the reach of evidence-based TPP programs in their respective communities. OAH anticipates that grantees will employ diverse strategies in working within their communities to scale up their initiatives. Because this information collection will contribute to the emerging knowledge base about community-wide efforts to scale up evidence-based programs (EBPs), mobilize community support, and establish linkages to youth-friendly health services at the community level, it will be important to document the variety of grantee approaches and challenges they have encountered as a result of local conditions and strategies. To document these features and experiences, a lead staff member in each grantee organization will be interviewed by phone as well as up to two key grantee partners. Partners to be interviewed will be selected based on the prominence and variety of their roles within each initiative in order to provide multiple perspectives on implementation. To obtain more detail on implementation than can be gathered in a telephone interview, site visits with up to 15 grantees will be conducted to collect data that will illustrate in detail a variety of approaches and strategies for scaling up to the community level evidence-based approaches to teen pregnancy prevention.

Likely Respondents: Respondents for telephone interviews will include 50 TPP Tier 1B grantee project directors and 100 implementation partner project directors. Site visit interview participants will include 120 grantee and partner staff members, and 40 Community Advisory Group members. Eighty Youth Leadership Council members will be recruited to participate in 10 focus groups.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Grantee director (telephone)	Attachment B	50	1	90/60	75

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Other grantee staff	Attachment A	60	1	1	60
Partner director (telephone)	Attachment B	100	1	90/60	150
Other partner directors	Attachment A	60	1	1	60
Youth Leadership Council members	Attachment A	80	1	1	80
Community Advisory Group Members	Attachment A	40	1	1	40
Total		390			465

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–15081 Filed 6–24–16; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Division of Behavioral Health, Office of Clinical and Preventive Services, Methamphetamine and Suicide Prevention Initiative—Generation Indigenous (Gen-I) Initiative Support

Announcement Type: Competing Supplement.

Funding Announcement Number: HHS–2016–IHS–MSPI–0002.

Catalog of Federal Domestic Assistance Number (CFDA): 93.933.

Key Dates

Application Deadline Date: August 1, 2016.

Review Date: August 8–19, 2016.

Earliest Anticipated Start Date: September 30, 2016.

Signed Tribal Resolutions Due Date: August 1, 2016.

Proof of Non-Profit Status Due Date: August 1, 2016.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS), an agency which is part of the Department of Health and Human Services (HHS), is accepting competitive grant applications for a four-year funding cycle of the Methamphetamine and Suicide Prevention Initiative (Short Title: MSPI)—Generation Indigenous (GEN–I) Initiative Support to continue the planning, development and implementation of the current grant funding cycle for the MSPI Purpose Area #4 (GEN–I Initiative Support) that focuses on promoting early intervention strategies and the implementation of positive youth development programming to reduce risk factors for suicidal behavior and substance abuse by working with Native youth up to and including age 24. This program was first established by the Consolidated Appropriations Act of 2008, Public Law 110–161, 121 Stat. 1844, 2135, and has been continued in the annual appropriations acts since that time. This program is authorized under the authority of the Snyder Act, 25 U.S.C. 13 and the Indian Health Care Improvement Act, 25 U.S.C. 1601–1683. The amounts made available for MSPI funding shall be allocated at the discretion of the Director of IHS and shall remain available until expended. IHS utilizes a national funding formula developed in consultation with Tribes and the National Tribal Advisory Committee on behavioral health, as well as conferring with urban Indian organizations (UIOs). The funding formula provides the allocation methodology for each IHS service area. This program is described in the Catalog of Federal Domestic Assistance under 93.933.

Background

IHS funded 128 Tribal, UIOs, and IHS Federal facilities for a five-year national program focusing on substance abuse and suicide prevention efforts for Indian Country. There are six overall goals of MSPI. The overall goals of MSPI is to: (1) Increase Tribal, UIO, and Federal capacity to operate successful methamphetamine prevention, treatment, and aftercare and suicide prevention, intervention, and postvention services through implementing community and organizational needs assessment and strategic plans; (2) develop and foster data sharing systems among Tribal, UIO, and Federal behavioral health service providers to demonstrate efficacy and impact; (3) identify and address suicide ideations, attempts, and contagions among American Indian and Alaska Native (AI/AN) populations through the development and implementation of culturally appropriate and community relevant prevention, intervention, and postvention strategies; (4) identify and address methamphetamine use among AI/AN populations through the development and implementation of culturally appropriate and community relevant prevention, treatment, and aftercare strategies; (5) identify provider and community education on suicide and methamphetamine use by offering appropriate trainings; and (6) promote positive AI/AN youth development and family engagement through the implementation of early intervention strategies to reduce risk factors for suicidal behavior and substance abuse. Currently funded projects were not required to address all of the six goals listed, only those relevant to the Purpose Area for which they were awarded. A total of 59 projects (Tribes, Tribal organizations, UIOs, and IHS Federal facilities) are currently funded for MSPI Purpose Area #4. IHS requested additional funding in the Fiscal Year (FY) 2016 President's Budget to expand MSPI Purpose Area #4, specifically to hire additional behavioral health staff to assist with the project.

Purpose

The primary purpose of this IHS grant is to focus on MSPI goal #6, "to promote positive AI/AN youth development and family engagement through the implementation of early intervention strategies to reduce risk factors for suicidal behavior and substance abuse." Projects will accomplish this by focusing specifically on MSPI Purpose Area #4: GEN–I Initiative Support.

Purpose Area #4: Generation Indigenous Initiative Support

The focus of Purpose Area #4 is to promote early intervention strategies and implement positive youth development programming to reduce risk factors for suicidal behavior and substance abuse. IHS is seeking applicants to address MSPI overarching goal #6 by working with Native youth up to and including age 24, on the following broad objectives:

1. Implement evidence-based and practice-based approaches to build resiliency, promote positive development, and increase self-sufficiency behaviors among Native youth;
2. Promote family engagement;
3. Increase access to prevention activities for youth to prevent methamphetamine use and other substance use disorders that contribute to suicidal behaviors, in culturally appropriate ways; and
4. Hire additional behavioral health staff (*i.e.,* licensed behavioral health providers and paraprofessionals, including but not limited to peer specialists, mental health technicians, and community health aides) specializing in child, adolescent, and family services who will be responsible for implementing the project's activities that address all the broad objectives listed.

Competing Supplement: Applicants Currently Funded for MSPI Purpose Area #4

This FOA is specifically open to projects that are currently funded for MSPI Purpose Area #4 (GEN–I Initiative Support). If the applicant does not know if they are a currently funded MSPI Purpose Area #4 grantee, please click on the following link to view all currently funded projects: *https://www.ihs.gov/mspi/includes/themes/newihstheme/display_objects/documents/mspi2015cohort1.pdf.*

Currently funded MSPI Purpose Area #4 grantees should note the following requirements:

1. If the applicant is a current grantee under MSPI Purpose Area #4, and the applicant will be applying under this FOA for additional funding, the applicant is NOT required to address all of the broad objectives listed. The applicant is only required to address the *one new,* broad objective in the Project Narrative scope of work:

- Hire additional behavioral health staff (*i.e.,* licensed behavioral health providers and paraprofessionals, including but not limited to peer specialists, mental health technicians, and community health aides) specializing in child, adolescent, and family services who will be responsible for implementing the project's activities that address all the broad objectives listed.

2. If the applicant is a current MSPI grantee funded for Purpose Area #4, the applicant is not allowed to duplicate current, approved activities, however the applicant can increase or supplement activities and provide that information in the Project Narrative scope of work.

Evidence-Based Practices, Practice-Based Evidence, Promising Practices, and Local Efforts

IHS strongly emphasizes the use of data and evidence in policymaking and program development and implementation. Applicants must identify one or more evidence-based practice, practice-based evidence, best or promising practice, and/or local effort that they plan to implement in the Project Narrative section of the application. The MSPI Program Web site (*http://www.ihs.gov/mspi/bestpractices/*) is one resource that applicants may use to find information to build on the foundation of prior substance use and suicide prevention and treatment efforts, in order to support the IHS, Tribes, and UIOs in developing and implementing Tribal and/or culturally appropriate substance use and suicide prevention and early intervention strategies.

Pre-Conference Grant Requirements

This section is only required if the applicant has included a "conference" in the proposed scope of work and intends on using funding to plan and conduct a conference or meeting during the project period. For definitions of what constitutes a "conference," please see the policy at the link provided below. The awardee is required to comply with the "HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting Space, Food, Promotional Items, and Printing and Publications," dated December 16, 2013 ("Policy"), as applicable to conferences funded by grants and cooperative agreements. The Policy is available at *http://www.hhs.gov/grants/contracts/contract-policies-regulations/conference-spending/.*

The awardee is required to:

Provide a separate detailed budget justification and narrative for each conference anticipated. The cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other (explain in detail and cost breakdown). For additional questions please contact Audrey Solimon, National Program Coordinator in the IHS Division of Behavioral Health, at *Audrey.Solimon@ihs.gov.*

II. Award Information

Type of Award

Grant.

Estimated Funds Available

The total amount of funding identified for awards is approximately $8,685,000. Individual award amounts are anticipated to be between $70,000 and $300,000. IHS expects to allocate funding for the 12 IHS service areas and UIOs as described in detail below. Applicants will be awarded according to their location within their respective IHS service area and will not compete with applicants from other IHS service areas. UIO applicants will be selected from a category set aside for UIO applicants only. The amount of funding available for competing and continuation awards issued under this announcement are subject to the availability of appropriations and budgetary priorities of the agency. IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately 25 awards will be issued under this funding opportunity announcement. The funding breakdown by area is as follows:

Alaska IHS Service Area

IHS expects to provide approximately $1,117,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $300,000.

Albuquerque IHS Service Area

IHS expects to provide approximately $433,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $200,000.

Bemidji IHS Service Area

IHS expects to provide approximately $539,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $200,000.

Billings IHS Service Area

IHS expects to provide approximately $487,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $200,000.

California IHS Service Area

IHS expects to provide approximately $382,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $200,000.

Great Plains IHS Service Area

IHS expects to provide approximately $875,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $175,000.

Nashville IHS Service Area

IHS expects to make two awards in the amount of $106,500 each, for a total of $213,000.

Navajo IHS Service Area

IHS expects to provide approximately $1,419,000 in total awards. Individual award amounts are anticipated to be between $200,000 and $300,000.

Oklahoma City IHS Service Area

IHS expects to provide approximately $1,335,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $300,000.

Phoenix IHS Service Area

IHS expects to provide approximately $875,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $175,000.

Portland IHS Service Area

IHS expects to make two awards in the amount of $132,334 each, for a total of $264,668.

Tucson IHS Service Area

IHS expects to make two awards in the amount of $73,000 each, for a total of $146,000.

Urban Indian Organizations

IHS expects to provide approximately $600,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $200,000.

Project Period

The project period is for four years and will run consecutively from September 30, 2016, to September 29, 2020.

III. Eligibility Information

1. Eligibility

Eligibility is limited to currently funded MSPI Purpose Area #4 grantees, who must be one of the following as defined by 25 U.S.C. 1603:

i. A Federally-recognized Indian Tribe 25 U.S.C. 1603(14).

ii. A Tribal organization 25 U.S.C. 1603(26).

iii. An urban Indian organization, 25 U.S.C. 1603(29); a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of non-profit status with the application, *e.g.*, 501(c)(3).

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications will be deemed ineligible and not considered for review if application budgets exceed the maximum funding amount listed for the applicant's IHS area breakdown outlined under the "Estimated Funds Available" section within this funding announcement. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

Grantee/Awardee Meetings

Grantees/awardees are required to send the project director and/or project coordinator (the individual who runs the day-to-day project operations) to an annual MSPI meeting. Participation will be in-person or via virtual meetings. The grantee/awardee is required to include travel for this purpose in the budget and narrative of the project proposal. At these meetings, grantees/awardees will present updates and results of their projects including note of significant or ongoing concerns related to project implementation or management. Federal staff will provide updates and technical assistance to grantees/awardees in attendance.

Tribal Resolution

Tribal resolutions are required from all Tribes and Tribal organizations. An Indian Tribe or Tribal organization that is proposing a project affecting another Indian Tribe must include *resolutions from all affected Tribes to be served.* Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities.

An official signed Tribal resolution must be received by the DGM prior to a Notice of Award being issued to any applicant selected for funding. However, if an official signed Tribal resolution cannot be submitted with the electronic application submission prior to the official application deadline date, a draft Tribal resolution must be submitted by the deadline in order for the application to be considered complete and eligible for review. The draft Tribal resolution is not in lieu of the required signed resolution, but is acceptable until a signed resolution is received. If an official signed Tribal resolution is not received by DGM when funding decisions are made, then a Notice of Award will not be issued to that applicant and the applicant will not receive any IHS funds until such time as the applicant a signed resolution has been submitted to the Grants Management Specialist listed in this funding announcement.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS DGM by obtaining documentation confirming delivery (*i.e.*, FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/dgm/funding/.*

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of Contents.
- Abstract (must be single-spaced and not exceed one page) summarizing the project.

- Application forms:
  - ○ SF–424, Application for Federal Assistance.
  - ○ SF–424A, Budget Information—Non-Construction Programs.
  - ○ SF–424B, Assurances—Non-Construction Programs.
- Statement of Need (must be single-spaced and not exceed two pages).
  - ○ Includes the Tribe, Tribal organization, or UIO background information.
- Project Narrative (must be single-spaced and not exceed 20 pages).
  - ○ Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeline Chart, and a Local Data Collection Plan.
- Budget and Budget Narrative (must be single-spaced and not exceed four pages).
- Tribal Resolution(s) (only required for Indian Tribes and Tribal organizations).
- Letter(s) of Support:
  - ○ *For All Applicants:* Local Organizational Partners;
  - ○ *For All Applicants:* Community Partners;
  - ○ *For Tribal organizations:* From the board of directors (or relevant equivalent);
  - ○ *For urban Indian organizations:* From the board of directors (or relevant equivalent).
- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all key personnel (*e.g.,* project director, project coordinator, grants coordinator, etc.).
- Contractor/consultant qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Documentation of current Office of Management and Budget (OMB) Audit as required by 45 CFR 75, Subpart F or other required Financial Audit (if applicable).

Acceptable forms of documentation include:

- ○ Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
- ○ Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants and cooperative agreements with exception of the discrimination policy.

Requirements for Statement of Need

The statement of need describes the history and current situation in the applicant's Tribal community ("community" means the applicant's Tribe, village, Tribal organization, or consortium of Tribes or Tribal organizations). The statement of need provides the facts and evidence that support the need for the project and established that the Tribe/Tribal organization or UIO understands the problems and can reasonably address them and provides background information on the Tribe, Tribal organization, or UIO. The statement of need must not exceed two, single-spaced pages and must be type written, have consecutively number pages, use black type not smaller than 12 characters per one inch, and printed on one side of standard size 8½″ × 11″ paper.

Requirements for Project, Budget and Budget Narratives

A. Project Narrative: This narrative, or proposed approach, should be a separate Word document that is no longer than 20 pages and must: Be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½" × 11"" paper.

Be sure to succinctly address and answer all questions listed under the Project Narrative section and place them under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they shall not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming familiar with the applicant's activities and accomplishments prior to this grant award. If the narrative exceeds the page limit, only the first 20 pages will be reviewed. The 20-page limit for the narrative does not include the table of contents, abstract, statement of need, work plan, standard forms, Tribal resolutions, budget or budget narrative, and/or other appendix items.

There are five (5) parts to the project narrative:

- Part A—Goals and Objectives;
- Part B—Project Activities;
- Part C—Timeline Chart (template provided);
- Part D—Organizational Capacity and Staffing/Administration; and
- Part E—Plan for Local Data Collection.

See below for additional details about what must be included in the narrative.

Part A: Goals and Objectives

- Describe the purpose of the proposed project that includes a clear statement of goals and objectives.
- Current MSPI Purpose Area #4 grantees should only address the one new broad objective ("Hire additional behavioral health staff specializing in child, adolescent, and family services who will be responsible for implementing the project's activities that address all the broad objectives listed") in the Project Narrative. (Note: if you are a current grantee, you are already addressing the first three broad objectives in your current scope of work). The objective should be clearly outlined in the project narrative. If the application does not address the one, new broad objective, the application will be considered ineligible and will not be reviewed for further consideration.

Part B: Project Activities

- Current MSPI Purpose Area #4 grantees are not allowed to duplicate current, approved activities, however you can increase or supplement current, approved activities and provide that information in the Project Narrative scope of work.
- Describe how project activities will increase the capacity of the identified community to plan and improve the coordination of a collaborative behavioral health and wellness service systems.
- Describe anticipated barriers to progress of the project and how the barriers will be addressed.
- Discuss how the proposed approach addresses the local language, concepts, attitudes, norms and values about suicide, and/or substance use.
- Describe how the proposed project will address issues of diversity within the population of focus including age, race, gender, ethnicity, culture/cultural identity, language, sexual orientation, disability, and literacy.
- If the applicant plans to include an advisory body in the project, describe its membership, roles and functions, and frequency of meetings.
- Describe how the efforts of the proposed project will be coordinated with any other related Federal grants, including IHS, the Substance Abuse and Mental Health Services Administration (SAMHSA), or Bureau of Indian Affairs (BIA) services provided in the community (if applicable).
- Identify any other organization(s) that will participate in the proposed project. Describe roles and responsibilities and demonstrate their commitment to the project. Include a

list of these organizations as an attachment to the application. In the attached list, indicate the organizations that the Tribe/Tribal organization or UIO has worked with or currently works with. [Note: The attachment will not count as part of the 20-page maximum.].

Part C: Timeline Chart

- Provide a one-year (first project year) timeline chart depicting a realistic timeline for the project period showing key activities, milestones, and responsible staff. These key activities should include the requirements outlined for MSPI Purpose Area #4. [Note: The timeline chart should be included as part of the Project Narrative as specified here. It should not be placed as an attachment.]. The timeline chart should not exceed one-page.

Part D: Organizational Capacity and Staffing/Administration

- Describe the management capability and experience of the applicant Tribe, Tribal organization, or UIO and other participating organizations in administering similar grants and projects.
- Discuss the applicant Tribe, Tribal organization, or UIO experience and capacity to provide culturally appropriate/competent services to the community and specific populations of focus.
- Describe the resources available for the proposed project (*e.g.,* facilities, equipment, information technology systems, and financial management systems).
- Describe how project continuity will be maintained if/when there is a change in the operational environment (*e.g.,* staff turnover, change in project leadership, change in elected officials) to ensure project stability over the life of the grant.
- Include a position description for the behavioral health staff as an attachment to the project proposal/application for the behavioral health staff. The position description should not exceed one page. [Note: Attachments will not count against the 20 page maximum].
- For individuals that are identified and currently on staff, include a biographical sketch (not to include personally identifiable information) for the behavioral health staff as an attachment to the project proposal/application. Each biographical sketch should not exceed one page. Reviewers will not consider information past page one. [Note: Attachments will not count against the 20 page maximum]. Do not include any of the following:
  - Personally identifiable information;
  - Resumes; or
  - Curriculum Vitae.

Part E: Plan for Local Data Collection

- Describe the applicant's plan for gathering local data, submitting data requirements, and document the applicant's ability to ensure accurate data tracking and reporting. Describe how members of the community (including youth and families that may receive services) will be involved in the planning, implementation, and data collection.

Funded projects are required to coordinate data collection efforts with their assigned regional Technical Assistance (TA) Provider for evaluation. The regional TA Providers for evaluation are the Tribal Epidemiology Centers (TECs) for each IHS Area and additionally, the National Indian Health Board and the National Council of Urban Indian Health will also provide TA for evaluation. The TA Providers for evaluation are funded by IHS. Awardees will work with their assigned regional TA Provider for evaluation to measure and track the core processes, outcomes, impacts, and benefits associated with the MSPI. Awardees shall collect local data related to the project and submit it in annual progress reports to IHS and will assist the national MSPI evaluation. The purpose of the national evaluation is to assess the extent to which the projects are successful in achieving project goals and objectives and to determine the impact of MSPI-related activities on individuals and the larger community.

Progress reporting will be required on national data elements related to program outcomes and financial reporting for all awardees. Progress reports will be collected annually throughout the project on a web-based data portal. Progress reports include the compilation of quantitative (numerical) data (*e.g.,* number served, screenings completed, etc.) and qualitative or narrative (text) data (*e.g.,* program accomplishments, barriers to implementation, and description of partnership and coalition work).

The reporting portal will be open to project staff on a 24 hour/7 day week basis for the duration of each reporting period. In addition, Federal financial report forms (SF–425), which document funds received and expended during the reporting period, will be available. Required financial forms will be available from the IHS DGM and other required forms will be provided throughout the funding period by DGM or the IHS Division of Behavioral Health (DBH). All document/materials are to be submitted online. Technical assistance for web-based data entry and for the completion of required fiscal documents will be timely and readily available to awardees by assigned IHS project officers.

B. Budget and Budget Narrative: The applicant is required to include a line item budget for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative for Project Year 1 only. The budget should match the scope of work described in the project narrative for the first project year expenses only. The page limitation should not exceed four single-spaced pages.

Current MSPI grantees funded for Purpose Area #4 are not allowed to duplicate current, approved budget costs, however you can increase funding in your current, approved line item(s) to supplement your current, approved budget and provide that information and clarification in the Budget Narrative/justification.

The applicant must provide a narrative justification for all items included in the proposed line item budget supporting the mission and goals of MSPI, as well as a description of existing resources and other support the applicant expects to receive for the proposed project. Other support is defined as funds or resources, whether Federal, non-Federal or institutional, in direct support of activities through fellowships, gifts, prizes, in-kind contributions or non-Federal means. (This should correspond to Item #18 on the applicant's SF–424, Estimated Funding.) Provide a narrative justification supporting the development or continued collaboration with other partners regarding the proposed activities to be implemented.

Templates

Templates are provided for the project narrative, timeline chart, budget and budget narrative, and biographical sketch. These templates can be located and download at the MSPI Web site at: *https://www.ihs.gov/mspi.*

3. Submission Dates and Times

Applications must be submitted electronically through *Grants.gov* by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the electronic application process, contact *Grants.gov* Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), DGM Grant Systems Coordinator, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). The waiver must: (1) Be documented in writing (emails are acceptable), *before* submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov*. Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval *must* be submitted along with the hardcopy of the application that is mailed to DGM. Paper applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Find Grant Opportunities" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, the applicant must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact *Grants.gov* Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov*. Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to fifteen working days.
- Please use the optional attachment feature in *Grants.gov* to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this Funding Announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The DGM will download the application from *Grants.gov* and provide necessary copies to the appropriate agency officials. Neither the DGM nor the DBH will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access it through *http://fedgov.dnb.com/webform*, or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended ("Transparency Act"), to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 20 page narrative should include only the first year of activities. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 65 points is required for funding. Points are assigned as follows:

1. Criteria

Applications will be reviewed and scored according to the quality of responses to the required application components in Sections A–E below. In developing the required sections of this application, use the instructions provided for each section, which have been tailored to this program. The application must use the five sections (Sections A–E) listed below in developing the application. The applicant must place the required information in the correct section or it will not be considered for review. The application will be scored according to how well the applicant addresses the requirements for each section listed below. The number of points after each heading is the maximum number of points the review committee may assign to that section. Although scoring weights are not assigned to individual bullets, each bullet is assessed deriving the overall section score.

A. Statement of Need (History and Current Situation in Your Tribal Community) (35 Points)

The statement of need should not exceed two single-spaced pages.

(1) Identify the proposed catchment area and provide demographic information on the population(s) to receive services through the targeted systems or agencies, *e.g.,* race, ethnicity, Federally recognized Tribe, language, age, socioeconomic status, sexual identity (sexual orientation, gender identity), and other relevant factors, such as literacy. Describe the stakeholders and resources in the catchment area that can help implement the needed infrastructure development.

(2) Based on the information and/or data currently available, document the prevalence of suicide ideations, attempts, clusters (groups of suicides or suicide attempts or both that occurred close together in time and space), completions, and substance use rates. For this Purpose Area, the data should be geared toward AI/AN children and youth.

(3) Based on the information and/or data currently available, document the need for an enhanced infrastructure to increase the capacity to implement, sustain, and improve effective substance abuse prevention and/or behavioral health services in the proposed catchment area that is consistent with the purpose of the program and the funding opportunity announcement. Based on available data, describe the service gaps and other problems related to the need for infrastructure development. Identify the source of the data. Documentation of need may come from a variety of qualitative and quantitative sources. Examples of data sources for the quantitative data that could be used are local epidemiologic data (TECs, IHS area offices), state data (*e.g.,* from state needs assessments), and/or national data (*e.g.,* SAMHSA's National Survey on Drug Use and Health or from National Center for Health Statistics/Centers for Disease Control reports, and Census data). This list is not exhaustive; applicants may submit other valid data, as appropriate for the applicant's program.

(4) Describe the current suicide prevention, substance abuse prevention, trauma-related, and mental health promotion activities happening in the applicant's community/communities for Native youth up to and including age 24 and their families. Indicate which organizations/entities are currently offering these activities and where the resources come from to support them.

(5) Describe the current service gaps, including disconnection between available services and unmet needs of Native youth up to and including age 24 and their families.

(6) Describe potential project partners and community resources in the catchment area that can participate in the planning process and infrastructure development.

B. Project Narrative/Proposed Approach (20 Points)

The project narrative required components (listed as the six components in "Requirements for Project Narrative") together should not exceed 20 single-spaced pages.

(1) Describe the purpose of the proposed project, including a clear statement of goals and objectives. The proposed project narrative is required to address the one additional broad objective listed for MSPI Purpose Area #4. Describe how achievement of goals will increase system capacity to support the goals and objectives or activities for MSPI Purpose Area #4 by showing how the project will work with Native youth up to and including age 24.

(2) Describe how project activities will increase the capacity of the identified community to plan and improve the coordination of a collaborative behavioral health and wellness service system. Describe anticipated barriers to progress of the project and how these barriers will be addressed.

(3) Discuss how the proposed approach addresses the local language, concepts, attitudes, norms and values about suicide, and/or substance use.

(4) Describe how the proposed project will address issues of diversity for Native youth up to and including age 24 including race/ethnicity, gender, culture/cultural identity, language, sexual orientation, disability, and literacy.

(5) Describe how Native youth up to and including ages 24 and families may receive services and how they will be involved in the planning, implementation, and data collection and regional evaluation of the project.

(6) Describe how the efforts of the proposed project will be coordinated with any other related Federal grants, including IHS, SAMHSA, or BIA services provided in the community (if applicable).

(7) Provide a timeline chart depicting a realistic timeline for 1-year project period showing key activities, milestones, and responsible staff. [Note: The timeline chart should be part of the project narrative as specified in the "Requirements for Project Proposals"

section. It should not be placed as an attachment.].

(8) If the applicant plans to include an advisory body in the project, describe its membership, roles and functions, and frequency of meetings.

(9) Identify any other organization(s) that will participate in the proposed project. Describe their roles and responsibilities and demonstrate their commitment to the project. Include a list of these organizations as an attachment to the project proposal/application. In the attached list, indicate the organizations that the Tribe/Tribal organization or UIO has worked with or currently works with. [Note: The attachment will not count as part of the 20-page maximum.].

C. Organizational Capacity and Staffing/Administration (15 Points)

(1) Describe the management capability and experience of the applicant Tribe, Tribal organization, or UIO and other participating organizations in administering similar grants and projects.

(2) Identify the department/division that will administer this project. Include a description of this entity, its function and its placement within the organization (Tribe, Tribal organization, or UIO). If the program is to be managed by a consortium or Tribal organization, identify how the project office relates to the member community/communities.

(3) Discuss the applicant Tribe, Tribal organization, or UIO experience and capacity to provide culturally appropriate/competent services to the community and specific populations of focus.

(4) Describe the resources available for the proposed project (*e.g.,* facilities, equipment, information technology systems, and financial management systems).

(5) Describe how project continuity will be maintained if/when there is a change in the operational environment (*e.g.,* staff turnover, change in project leadership, change in elected officials) to ensure project stability over the life of the grant.

(6) Demonstrate successful project implementation for the level of effort budgeted for the behavioral health staff and provide qualifications.

(7) Include a position description as an attachment to the application for the behavioral health staff. The position description should not exceed one page each. [Note: Attachments will not count against the 20 page maximum].

(8) For individuals that are currently on staff, include a biographical sketch (not to include personally identifiable information) for the behavioral health staff. Describe the experience of identified staff in mental health promotion, suicide and substance abuse prevention work in the community/communities. Include the biographical sketch as an attachment to the project proposal/application. Biographical sketches should not exceed one page per staff member. Reviewers will not consider information past page one. [**Note:** Attachments will not count against the 20 page maximum]. *Do not* include any of the following:

- Personally identifiable information;
- Resumes; or
- Curriculum Vitae.

D. Local Data Collection Plan (20 Points)

Describe the applicant's plan for gathering local data, submitting data requirements, and document the applicant's ability to ensure accurate data tracking and reporting. Describe how members of the community (including Native youth up to and including age 24 and families that may receive services) will be involved in the planning, implementation, and data collection.

Funded projects are required to coordinate data collection efforts with their assigned regional TA Provider for evaluation. The regional TA Providers for evaluation are the Tribal Epidemiology Centers (TECs) for each IHS Area and additionally, the National Indian Health Board and the National Council of Urban Indian Health will also provide TA for evaluation. The TA Providers for evaluation are funded by IHS. Awardees will work with their assigned regional TA Provider for evaluation to measure and track the core processes, outcomes, impacts, and benefits associated with the MSPI. Awardees shall collect local data related to the project and submit it in annual progress reports to IHS and will assist the national MSPI evaluation. The purpose of the national evaluation is to assess the extent to which the projects are successful in achieving project goals and objectives and to determine the impact of MSPI-related activities on individuals and the larger community.

Progress reporting will be required on national selected data elements related to program outcomes and financial reporting for all awardees. Progress reports will be collected annually throughout the project on a web-based data portal. Progress reports include the compilation of quantitative (numerical) data (*e.g.,* number served, screenings completed, etc.) and qualitative or narrative (text) data (*e.g.,* program accomplishments, barriers to implementation, and description of partnership and coalition work).

E. Budget and Budget Narrative (10 Points)

The applicant is required to include a line item budget for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative for Project Year 1 only. The budget should match the scope of work described in the project narrative for the first project year expenses only. The budget and budget narrative must not exceed four single-spaced pages.

Current MSPI grantees funded for Purpose Area #4 are not allowed to duplicate current, approved budget costs; however the grantee can increase funding in the current, approved line item(s) to supplement the current, approved budget and provide that information and clarification in the Budget Narrative/justification.

The applicant must provide a narrative justification of the items included in the proposed line item budget supporting the mission and goals of MSPI, as well as a description of existing resources and other support the applicant expects to receive for the proposed project. Other support is defined as funds or resources, whether Federal, non-Federal or institutional, in direct support of activities through fellowships, gifts, prizes, in-kind contributions or non-Federal means (this should correspond to Item #18 on the applicant's SF–424, Estimated Funding). Provide a narrative justification supporting the development or continued collaboration with other partners regarding the proposed activities to be implemented.

The Budget and Budget Narrative the applicant provides will be considered by reviewers in assessing the applicant's submission, along with the material in the Project Narrative. Applicants should ensure that the budget and budget narrative are aligned with the project narrative.

Additional documents can be uploaded as Appendix Items in *Grants.gov*

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for other key staff.
- Resumes of other key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the IHS program to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.,* budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the grants management officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 65 points, and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application submitted. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be "Approved", but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2016 the approved but unfunded application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Grants are administered in accordance with the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, "Cost Principles," located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, "Audit Requirements," located at 45 CFR part 75, subpart F.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under "Agency Contacts" or the main DGM office at (301) 443–5204.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a "Grant Note" in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final program progress report must be submitted within 90 days of expiration of the budget/project period at the end of the funding cycle. Additional information for reporting and associated requirements will be included in the

“Programmatic Terms and Conditions” in the official NoA, if funded.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at *http://www.dpm.psc.gov*. It is recommended that the applicant also send a copy of the FFR (SF–425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Post Conference Grant Reporting

The following requirements were enacted in Section 3003 of the Consolidated Continuing Appropriations Act, 2013, and Section 119 of the Continuing Appropriations Act, 2014; *Office of Management and Budget Memorandum M–12–12:* All HHS/IHS awards containing grants funds allocated for conferences will be required to complete a mandatory post award report for all conferences. Specifically: The total amount of funds provided in this award/cooperative agreement that were spent for “Conference X”, must be reported in final detailed actual costs *within 15 days of the completion of the conference*. Cost categories to address should be: *(1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other.*

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) the project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy Web site at: *http://www.ihs.gov/dgm/policytopics/.*

E. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person’s race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see *http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/.*

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see *http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html;* and *http://www.hhs.gov/civil-rights/index.html.* Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html.* Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html* or call 1–800–368–1019 or TDD 1–800–537–7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at *http://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53.*

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS.

Recipients will be required to sign the HHS–690 Assurance of Compliance form which can be obtained from the following Web site: *http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf,* and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW., Washington, DC 20201.

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) before making any award in excess of the simplified acquisition threshold (currently $150,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant’s integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, Maryland 20857, (Include "Mandatory Grant Disclosures" in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *Robert.Tarwater@ihs.gov*

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW., Cohen Building, Room 5527, Washington, DC 20201, URL: *http://oig.hhs.gov/fraud/report-fraud/index.asp*, (Include "Mandatory Grant Disclosures" in subject line), Fax: (202) 205–0604 (Include "Mandatory Grant Disclosures" in subject line) or email: *MandatoryGranteeDisclosures@oig.hhs.gov*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Audrey Solimon, Public Health Analyst, National MSPI/DVPI Program Coordinator, Division of Behavioral Health, 5600 Fishers Lane, Mail Stop: 08N34–A, Rockville, MD 20857, Phone: (301) 590–5421, Fax: (301) 594–6213 Email: *Audrey.Solimon@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Willis Grant, Grants Management Specialist, Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2214, Fax: (301) 594–0899, Email: *Willis.Grant@ihs.gov*.

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Fax: (301) 594–0899, E-Mail: *Paul.Gettys@ihs.gov*.

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: June 16, 2016,

Elizabeth A. Fowler,

Deputy Director for Management Operations Indian Health Service.

[FR Doc. 2016–15113 Filed 6–24–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Clinical and Preventive Services: National HIV Program; HIV/AIDS Prevention and Engagement in Care

Announcement Type: New.

Funding Announcement Number: HHS–2016–IHS–OCPS–HIV–0001.

Catalog of Federal Domestic Assistance Number: 93.933.

Key Dates

Application Deadline Date: August 28, 2016.

Review Date: September 1–8, 2016.

Earliest Anticipated Start Date: September 30, 2016.

Signed Tribal Resolution Due Date: August 28, 2016.

Proof of Non-Profit Status Due Date: August 28, 2016.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive cooperative agreement applications for Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) Prevention and Engagement in Care. This program is funded by the Division of Sexually Transmitted Disease Prevention, Centers for Disease Control and Prevention (CDC). Funding for the HIV/AIDS award will be provided by CDC via an Interagency Agreement dated 06/10/2016 to IHS to permit obligation of funding appropriated by the Department of Defense, Military Construction and Veterans Affairs, and Full-Year Continuing Appropriations Act, 2013, Public Law 113–6. This program is described in the Catalog of Federal Domestic Assistance (CFDA) under 93.933."

Background

The IHS Office of Clinical and Preventive Services (OCPS), HIV/AIDS Program serves as the primary source for national education, policy development, budget development, and allocation for clinical, preventive, and public health HIV/AIDS programs for the IHS, area offices, and service units. It provides leadership in articulating the clinical, preventive, and public health needs of American Indian/Alaska Native (AI/AN) communities and developing, managing, and administering program functions related to HIV/AIDS.

Purpose

The purpose of this cooperative agreement is to meet AI/AN community's needs in achieving the goals of the National HIV/AIDS Strategy: Updated to 2020 (Strategy), released in July 2015. Specifically, this agreement seeks to increase local activities to move the Nation forward toward improving its HIV prevention and care outcomes with special emphasis in one of five areas:

(1) Increasing access to comprehensive Pre-Exposure Prophylaxis (PrEP) services for those whom it is appropriate and desired;

(2) Identifying local-level priorities for HIV care needs and creating tools and resources appropriate to meet those priorities;

(3) Improving engagement and retention in care among People Living with HIV/AIDS (PLWHA);

(4) Supporting and educating communities on risk reduction activities for persons who inject drugs and extend access to services for medication-assisted therapies for persons with opioid addiction in accordance with Federal, state, Tribal, and local laws; and,

(5) Increasing local-level delivery of age-appropriate HIV and Sexually Transmitted Infections (STI) prevention education.

II. Award Information

Type of Award

Cooperative Agreement.

Estimated Funds Available

The total amount of funding identified for the current fiscal year (FY) 2016 is approximately $500,000. Individual award amounts are anticipated to be between $20,000 and $100,000. The amount of funding available for competing and continuation awards issued under this announcement are subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately five awards will be issued under this program announcement. OS and IHS will concur on the final decision as to who will receive awards.

Project Period

The project period is for five years and will run consecutively from September 30, 2016 to September 29, 2021.

Cooperative Agreement

Cooperative agreements awarded by CDC are administered under the same policies as a grant. The funding agency is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both the funding agency and the grantee. OS, through IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

(1) Interpretation of current scientific literature related to epidemiology, statistics, surveillance, and other HIV disease control activities;

(2) Design and implementation of program components (including, but not limited to, program implementation methods, surveillance, epidemiologic analysis, outbreak investigation, development of programmatic evaluation, development of disease control programs, and coordination of activities);

(3) Implementation of program management best practices;

(4) Conduct site visits to assess program progress and provide programmatic technical assistance as travel funds allow; and

(5) Coordination of these activities with all IHS HIV activities on a national basis.

B. Grantee Cooperative Agreement Award Activities

(1) Develop and deploy a plan of action to reduce disparities and increase services relevant to at least one of the above-named five areas of interest relevant to the updated Strategy.

(2) Provide a three page mid-year report and no more than a ten page summary annual report at the end of each project year. The report should include the HHS HIV common indicators and establish the impact and outcomes of activities undertaken during the funding period. For more information on the Common Indicators, please see: *https://www.aids.gov/pdf/hhs-common-hiv-indicators.pdf.*

III. Eligibility Information

1. Eligibility

To be eligible for this "New Announcement" under this announcement, an applicant must be one of the following as defined by 25 U.S.C. 1603: i. An Indian Tribe, 25 U.S.C. 1603(14); operating an Indian health program operated pursuant to a contract, grant, cooperative agreement, or compact with IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), (Pub. L. 93–638).

ii. A Tribal organization 25 U.S.C. 1603(26); operating an Indian health program operated pursuant to as contract, grant, cooperative agreement, or compact with the IHS pursuant to the ISDEAA, (Pub. L. 93–638).

iii. An Urban Indian organization, 25 U.S.C. 1603(29); operating a Title V Urban Indian health program that currently has a grant or contract with the IHS under Title V of the Indian Health Care Improvement Act, (Pub. L. 93–437). Applicants must provide proof of non-profit status with the application, *e.g.* 501(c)(3).

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required such as Tribal resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the "Estimated Funds Available" section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

The following documentation is required:

Tribal Resolution

An Indian Tribe or Tribal organization that is proposing a project affecting another Indian Tribe must include *resolutions from all affected Tribes to be served.* Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities.

An official signed Tribal resolution must be received by the DGM prior to a Notice of Award being issued to any applicant selected for funding. However, if an official signed Tribal resolution cannot be submitted with the electronic application submission prior to the official application deadline date, a draft Tribal resolution must be submitted by the deadline in order for the application to be considered complete and eligible for review. The draft Tribal resolution is not in lieu of the required signed resolution, but is acceptable until a signed resolution is received. If an official signed Tribal resolution is not received by DGM when funding decisions are made, then a Notice of Award will not be issued to that applicant and they will not receive any IHS funds until such time as they have submitted a signed resolution to the Grants Management Specialist listed in this funding announcement.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS by obtaining documentation confirming delivery (*i.e.,* FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/dgm/funding/.*

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - ○ SF–424, Application for Federal Assistance.
  - ○ 424A, Budget Information—Non-Construction Programs.
  - ○ 424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed five pages).
- Project Narrative (must be single spaced and not exceed 15 pages).
  - ○ Background information on the organization.
  - ○ Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Tribal Resolution(s).
- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all key personnel.
- Contractor/consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Organizational chart (optional).
- Documentation of current Office of Management and Budget (OMB) Audit as required by 45 CFR 75, Subpart F or other required Financial Audit (if applicable).
- Acceptable forms of documentation include:
  - ○ Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - ○ Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants and cooperative agreements with exception of the discrimination policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate Word document that is no longer than 15 pages and must: Be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ x 11″ paper.

Be sure to succinctly address and answer all questions listed under the narrative and place them under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they shall not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming familiar with the applicant's activities and accomplishments prior to this cooperative agreement award. If the narrative exceeds the page limit, only the first 15 pages will be reviewed. The 15-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information—3 Pages

Section 1: Needs

Describe how the Indian Tribe or organization has determined it has the administrative infrastructure to support activities to increase HIV/AIDS activities and assist individuals. Explicitly state which major element from the Strategy that will be addressed and how this element is important to the needs of the community. Explain any previous planning activities the Tribe or organization has completed relevant to this or similar goals.

Part B: Program Planning and Evaluation—5 Pages

Section 1: Program Plans

Describe fully and clearly the direction the Indian Tribe plans to meet its goals, including how the Tribe plans to demonstrate improved health and services to the community it serves. Include proposed timelines.

Section 2: Program Evaluation

Describe fully and clearly the improvements that will be made by the Indian Tribe to manage the health care system and identify the anticipated or expected benefits for the Tribe or AI/AN people served.

Part C: Program Report—7 Pages

Please identify and describe significant program achievements associated with the delivery of quality health services or outreach services in the past 24 months in implementing previous grants, cooperative agreements, or other related activities. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 24 months. Please identify and summarize recent major health related project activities of the work done during the project period.

B. Budget Narrative: This narrative must include a line item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative. Budget should match the scope of work described in the project narrative. The page limitation should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through *Grants.gov* by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the electronic application process, contact *Grants.gov* Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), DGM Grant Systems Coordinator, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). The waiver must: (1) Be documented in writing (emails are acceptable), *before* submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov.* Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval *must* be submitted along with the hardcopy of the application that is mailed to DGM. Paper applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Find Grant Opportunities" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, the applicant must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact *Grants.gov* Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting *Grants.gov,* obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihg.gov.* Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to fifteen working days.
- Please use the optional attachment feature in *Grants.gov* to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this funding announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The DGM will download the application from *Grants.gov* and provide necessary copies to the appropriate agency officials. Neither the DGM nor the National HIV Program will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access it through *http://fedgov.dnb.com/webform,* or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended ("Transparency Act"), to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 15 page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See "Multi-year Project Requirements" at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (15 Points)

(1) Define the project's target population, identify unique characteristics, and describe the impact of HIV on the population.

(2) Describe challenges to providing HIV care and retaining patients in care in the population.

(3) Describe the gaps/barriers in awareness and access to PrEP for the population.

(4) Describe the cultural or sociological barriers of the target population in seeking or accessing services, including HIV prevention services.

B. Project Objective(s), Work Plan and Approach (40 Points)

(1) Objectives

i. Describe the objectives of the program and how they will improve HIV care and prevention outcomes in the community served. Identify which areas of HIV prevention and care will be addressed, particularly as they relate to:

a. Increasing access to comprehensive PrEP services for those whom it is appropriate and desired;

b. Identifying local-level priorities for HIV care needs and creating tools and resources appropriate to meet those priorities;

c. Improving engagement and retention in care among People Living with HIV/AIDS (PLWHA);

d. Supporting and educating communities on risk reduction activities for persons who inject drugs and extend access to services for medication-assisted therapies for persons with opioid addiction in accordance with Federal, state, Tribal, and local laws; and,

e. Increasing local-level delivery of age-appropriate HIV and STI prevention education.

(2) Work Plan

a. Identify the proposed program activities and explain how these activities will increase and sustain HIV prevention and/or care activities.

b. Provide a clear timeline with quarterly milestones for project activities.

(3) Approach

i. Describe how the program will be implemented to address the areas of interest identified in the objectives.

ii. Describe how program will increase access to PrEP services for the community served.

iii. Describe the program strategies to linking seropositive patients to care and effectively engaging them in care.

iv. Describe program strategies to improve other HIV care and prevention outcomes.

v. Describe the program quality assurance strategies.

vi. Describe how the program will ensure client confidentiality.

vii. Describe how the program will ensure that services are culturally sensitive and relevant.

viii. Describe how the program will conduct harm-reduction activities relevant to the needs of persons who inject drugs.

ix. Describe how the program will develop and disseminate age-appropriate HIV and STI prevention education.

C. Program Evaluation (20 Points)

(1) Grantee shall provide a plan for monitoring and evaluating proposed activities.

(2) Evaluation planning must include reporting on the HHS HIV Core indicators relevant to the program's objectives and be aligned with updated NHAS indicators.

(3) Optional Measures:

i. Sustainability measures undertaken to continue testing following the end of this funding.

D. Organizational Capabilities, Key Personnel and Qualifications (20 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plan.

(1) Describe the organizational structure.

(2) Describe what equipment (*i.e.*, phone, Web sites, etc.) and facility space (*i.e.*, office space) will be available for use during the proposed project.

a. Include information about any equipment not currently available that will be purchased throughout the agreement.

(3) List key personnel who will work on the project.

i. Identify staffing plan, existing personnel and new program staff to be hired.

ii. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumés must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.

iii. If the project requires additional personnel beyond those covered by the supplemental grant, (*i.e.*, IT support, volunteers, interviewers, etc.), note these and address how these positions will be filled and, if funds are required, the source of these funds.

iv. If personnel are to be only partially funded by this supplemental grant, indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary.

(4) Capability

i. Briefly describe the facility and user population.

ii. Describe the Tribe or the organization's ability to conduct this initiative.

E. Categorical Budget and Budget Justification (5 Points)

Provide a clear estimate of the project program costs and justification for expenses for the entire grant period. The budget and budget justification should be consistent with the tasks identified in the work plan. The budget focus should be on increasing and sustaining HIV testing services as well as supporting entry and retention into care.

(1) Budget narrative that serves as justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of allowable costs.

(2) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a

copy of the rate agreement in the appendix.

Multi-Year Project Requirements

Projects requiring a second, third, fourth, and/or fifth year must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project.

Additional Documents Can Be Uploaded as Appendix Items in *Grants.gov*

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumés of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the IHS program to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.,* budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 60 points, and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application submitted. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be "Approved", but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2016 the approved but unfunded application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, "Cost Principles," located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, "Audit Requirements," located at 45 CFR part 75, subpart F.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes*. For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under "Agency Contacts" or the main DGM office at (301) 443–5204.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a "Grants Note" in the GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report (FFR) (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at: *http://www.dpm.psc.gov.* It is recommended that the applicant also send a copy of the FFR (SF–425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy Web site at: *http://www.ihs.gov/dgm/policytopics/.*

D. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see *http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/.*

The HHS Office for Civil Rights also provides guidance on complying with civil rights laws enforced by HHS. Please see *http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html;* and *http://www.hhs.gov/civil-rights/index.html.* Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html.* Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under federal civil rights laws at *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html* or call 1–800–368–1019 or TDD 1–800–537–7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at *http://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53.*

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for benefits and services from the Indian Health Service.

Recipients will be required to sign the HHS–690 Assurance of Compliance form which can be obtained from the following Web site: *http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf,* and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW., Washington, DC 20201.

E. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS, is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) before making any award in excess of the simplified acquisition threshold (currently $150,000) over the period of performance. An applicant may review and comment on any information about itself that a federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the Indian Health Service must require a non-federal entity or an applicant for a federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of federal criminal law involving fraud, bribery,or gratutity violations potentially affecting the federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mailstop 09E70, Rockville, Maryland 20857. (Include "Mandatory Grant Disclosures" in subject line) *Ofc:* (301) 443–5204, *Fax:* (301) 594–0899, *Email: Robert.Tarwater@ihs.gov. and*

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW., Cohen Building, Room 5527, Washington, DC 20201. *URL: http://oig.hhs.gov/fraud/reportfraud/index.asp.* (Include "Mandatory Grant Disclosures" in subject line) *Fax:* (202) 205–0604 (Include "Mandatory Grant Disclosures" in subject line) or *Email: MandatoryGranteeDisclosures@oig.hhs.gov.*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Lisa C. Neel, MPH, HIV Program Coordinator, Office of Clinical and Preventive Services, 5600 Fishers Lane, Mailstop: 08N34A, Rockville, Maryland 20857, *Phone:* 301–443–4305, *Email: Lisa.Neel@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Willis Grant, Grants Management Specialist, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, 301–443–2214, 301–594–0899, *Email: Willis.Grant@ihs.gov.*

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, *Phone:* 301–443–2114; or the DGM main line 301–443–5204, *Fax:* 301–443–9602, *E-Mail: Paul.Gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: March 21, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–15115 Filed 6–24–16; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Division of Behavioral Health, Office of Clinical and Preventive Services, Methamphetamine and Suicide Prevention Initiative—Generation Indigenous (Gen-I), Initiative Support

Announcement Type: New.
Funding Announcement Number: HHS–2016–IHS–MSPI–0001.
Catalog of Federal Domestic Assistance Number (CFDA): 93.933.

Key Dates

Application Deadline Date: August 1, 2016.
Review Date: August 8–19, 2016.
Earliest Anticipated Start Date: September 30, 2016.
Signed Tribal Resolutions Due Date: August 1, 2016.
Proof of Non-Profit Status Due Date: August 1, 2016.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS), an agency which is part of the Department of Health and Human Services (HHS), is accepting competitive grant applications for a four-year funding cycle of the Methamphetamine and Suicide Prevention Initiative (Short Title: MSPI)—Generation Indigenous (GEN–I) Initiative Support to continue the planning, development and implementation of the current grant funding cycle for the MSPI Purpose Area #4 (GEN–I Initiative Support) that focuses on promoting early intervention strategies and the implementation of positive youth development programming to reduce risk factors for suicidal behavior and substance abuse by working with Native youth up to and including age 24. This program was first established by the Consolidated Appropriations Act of 2008, Public Law 110–161, 121 Stat. 1844, 2135, and has been continued in the annual appropriations acts since that time. This program is authorized under the authority of the Snyder Act, 25 U.S.C. 13 and the Indian Health Care Improvement Act, 25 U.S.C. 1601–1683. The amounts made available for MSPI funding shall be allocated at the discretion of the Director of IHS and shall remain available until expended. IHS utilizes a national funding formula developed in consultation with Tribes and the National Tribal Advisory Committee on behavioral health, as well as conferring with urban Indian organizations (UIOs). The funding formula provides the allocation methodology for each IHS service area. This program is described in the Catalog of Federal Domestic Assistance under 93.933.

Background

IHS funded 128 Tribal, UIOs, and IHS Federal facilities for a five-year national program focusing on substance abuse and suicide prevention efforts for Indian Country. There are six overall goals of MSPI. The overall goals of MSPI are to: (1) Increase Tribal, UIO, and Federal capacity to operate successful methamphetamine prevention, treatment, and aftercare and suicide prevention, intervention, and postvention services through implementing community and organizational needs assessment and strategic plans; (2) develop and foster data sharing systems among Tribal, UIO, and Federal behavioral health service providers to demonstrate efficacy and impact; (3) identify and address suicide ideations, attempts, and contagions among American Indian and Alaska Native (AI/AN) populations through the development and implementation of culturally appropriate and community relevant prevention, intervention, and postvention strategies; (4) identify and address methamphetamine use among AI/AN populations through the development and implementation of culturally appropriate and community relevant prevention, treatment, and aftercare strategies; (5) identify provider and community education on suicide and methamphetamine use by offering appropriate trainings; and (6) promote positive AI/AN youth development and family engagement through the implementation of early intervention strategies to reduce risk factors for suicidal behavior and substance abuse. Currently funded projects were not required to address all of the six goals listed, only those relevant to the Purpose Area for which they were awarded. A total of 59 projects (Tribes, Tribal organizations, urban Indian organizations, and IHS Federal facilities) are currently funded for MSPI Purpose Area #4. IHS requested additional funding in the FY 2016 President's Budget to expand MSPI Purpose Area #4, specifically to hire additional behavioral health staff to assist with the project.

Purpose

The primary purpose of this IHS grant is to focus on MSPI goal #6, "to promote positive AI/AN youth development and family engagement through the implementation of early intervention strategies to reduce risk factors for suicidal behavior and substance abuse." Projects will accomplish this by focusing specifically on MSPI Purpose Area #4: GEN–I Initiative Support.

Purpose Area #4: Generation Indigenous Initiative Support

The focus of Purpose Area #4 is to promote early intervention strategies and implement positive youth development programming to reduce risk factors for suicidal behavior and substance abuse. IHS is seeking applicants to address MSPI overall goal #6 by working with Native youth up to and including age 24, on the following broad objectives:

1. Implement evidence-based and practice-based approaches to build resiliency, promote positive development, and increase self-sufficiency behaviors among Native youth;
2. Promote family engagement;
3. Increase access to prevention activities for youth to prevent methamphetamine use and other substance use disorders that contribute to suicidal behaviors, in culturally appropriate ways; and
4. Hire additional behavioral health staff (*i.e.*, licensed behavioral health providers and paraprofessionals, including but not limited to peer specialists, mental health technicians, and community health aides) specializing in child, adolescent, and family services who will be responsible for implementing the project's activities that address all the broad objectives listed.

All four of the broad objectives listed for MSPI Purpose Area #4 must be addressed in the application Project Narrative scope of work for new applicants. If an application submission does not address all the required broad objectives in the Project Narrative scope of work the application will not be considered for funding.

Evidence-Based Practices, Practice-Based Evidence, Promising Practices, and Local Efforts

IHS strongly emphasizes the use of data and evidence in policymaking and program development and implementation. Applicants must identify one or more evidence-based practice, practice-based evidence, best or promising practice, and/or local effort that the applicant plans to implement in the Project Narrative section of the application. The MSPI Program Web site (*http://www.ihs.gov/mspi/bestpractices/*) is one resource that applicants may use to find information to build on the foundation of prior substance use and suicide prevention and treatment efforts, in order to support the IHS, Tribes, and UIOs in developing and implementing Tribal and/or culturally appropriate substance use and suicide prevention and early intervention strategies.

Pre-Conference Grant Requirements

This section is only required if the applicant has included a "conference" in the proposed scope of work and intends on using funding to plan and conduct a conference or meeting during the project period. For definitions of what constitutes a "conference," please see the policy at the link provided below. The awardee is required to comply with the "HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting Space, Food, Promotional Items, and Printing and Publications," dated December 16, 2013 ("Policy"), as applicable to conferences funded by grants and cooperative agreements. The Policy is available at *http://www.hhs.gov/grants/contracts/contract-policies-regulations/conference-spending/*.

The awardee is required to:

> Provide a separate detailed budget justification and narrative for each conference anticipated. The cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other (explain in detail and cost breakdown). For additional questions please contact Audrey Solimon, National Program Coordinator in the IHS Division of Behavioral Health, at Audrey.*Solimon@ihs.gov*.

II. Award Information

Type of Award

Grant.

Estimated Funds Available

The total amount of funding identified for awards is approximately $8,685,000. Individual award amounts are anticipated to be between $70,000 and $300,000. IHS expects to allocate funding for the 12 IHS service areas and UIOs as described in detail below. Applicants will be awarded according to their location within their respective IHS service area and will not compete with applicants from other IHS service areas. UIO applicants will be selected from a category set aside for UIO applicants only. The amount of funding available for competing and continuation awards issued under this announcement are subject to the availability of appropriations and budgetary priorities of the agency. IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately 25 awards will be issued under this funding opportunity announcement. The funding breakdown by area is as follows:

Alaska IHS Service Area

IHS expects to provide approximately $1,117,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $300,000.

Albuquerque IHS Service Area

IHS expects to provide approximately $433,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $200,000.

Bemidji IHS Service Area

IHS expects to provide approximately $539,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $200,000.

Billings IHS Service Area

IHS expects to provide approximately $487,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $200,000.

California IHS Service Area

IHS expects to provide approximately $382,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $200,000.

Great Plains IHS Service Area

IHS expects to provide approximately $875,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $175,000.

Nashville IHS Service Area

IHS expects to make two awards in the amount of $106,500 each, for a total of $213,000.

Navajo IHS Service Area

IHS expects to provide approximately $1,419,000 in total awards. Individual award amounts are anticipated to be between $200,000 and $300,000.

Oklahoma City IHS Service Area

IHS expects to provide approximately $1,335,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $300,000.

Phoenix IHS Service Area

IHS expects to provide approximately $875,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $175,000.

Portland IHS Service Area

IHS expects to make two awards in the amount of $132,334 each, for a total of $264,668.

Tucson IHS Service Area

IHS expects to make two awards in the amount of $73,000 each, for a total of $146,000.

Urban Indian Organizations

IHS expects to provide approximately $600,000 in total awards. Individual award amounts are anticipated to be between $100,000 and $200,000.

Project Period

The project period is for four years and will run consecutively from September 30, 2016, to September 29, 2020.

III. Eligibility Information

1. Eligibility

Eligible Applicants must be one of the following as defined by 25 U.S.C. 1603:

i. A Federally-recognized Indian Tribe 25 U.S.C. 1603(14).

ii. A Tribal organization 25 U.S.C. 1603(26).

iii. An urban Indian organization, 25 U.S.C. 1603(29); a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of non-profit status with the application, *e.g.*, 501(c)(3).

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications will be deemed ineligible and not considered for review if application budgets exceed the maximum funding amount listed for the applicant's IHS area breakdown outlined under the "Estimated Funds Available" section within this funding announcement. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

Grantee/Awardee Meetings

Grantees/awardees are required to send the project director and/or project coordinator (the individual who runs the day-to-day project operations) to an annual MSPI meeting. Participation will be in-person or via virtual meetings. The grantee/awardee is required to include travel for this purpose in the budget and narrative of the project proposal. At these meetings, grantees/awardees will present updates and results of their projects including note of significant or ongoing concerns related to project implementation or management. Federal staff will provide updates and technical assistance to grantees/awardees in attendance.

Tribal Resolution

Tribal resolutions are required from all Tribes and Tribal organizations. An Indian Tribe or Tribal organization that is proposing a project affecting another Indian Tribe must include *resolutions from all affected Tribes to be served.* Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities.

An official signed Tribal resolution must be received by the DGM prior to a Notice of Award being issued to any applicant selected for funding. However, if an official signed Tribal resolution cannot be submitted with the electronic application submission prior to the official application deadline date, a draft Tribal resolution must be submitted by the deadline in order for the application to be considered complete and eligible for review. The draft Tribal resolution is not in lieu of the required signed resolution, but is acceptable until a signed resolution is received. If an official signed Tribal resolution is not received by DGM when funding decisions are made, then a Notice of Award will not be issued to that applicant and that applicant will not receive any IHS funds until such time as a signed resolution has been submitted to the Grants Management Specialist listed in this funding announcement.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS DGM by obtaining documentation confirming delivery (*i.e.*, FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/dgm/funding/*.

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of Contents.
- Abstract (must be single-spaced and not exceed one page) summarizing the project.
- Application forms:
  - ○ SF–424, Application for Federal Assistance.
  - ○ SF–424A, Budget Information—Non-Construction Programs.
  - ○ SF–424B, Assurances—Non-Construction Programs.
- Statement of Need (must be single-spaced and not exceed two pages).

  - ○ Includes the Tribe, Tribal organization, or UIO background information.
- Project Narrative (must be single-spaced and not exceed 20 pages).
  - ○ Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeline Chart, and a Local Data Collection Plan.
- Budget and Budget Narrative (must be single-spaced and not exceed four pages).
- Tribal Resolution(s) (only required for Indian Tribes and Tribal organizations).
- Letter(s) of Support:
  - ○ For all applicants: Local organizational partners;
  - ○ For all applicants: Community partners;
  - ○ For Tribal organizations: From the board of directors (or relevant equivalent);
  - ○ For urban Indian organizations: From the board of directors (or relevant equivalent).
- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all key personnel (*e.g.,* project director, project coordinator, grants coordinator, etc.).
- Contractor/consultant qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Documentation of current Office of Management and Budget (OMB) Audit as required by 45 CFR 75, Subpart F or other required Financial Audit (if applicable).

Acceptable forms of documentation include:

  - ○ Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - ○ Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants and cooperative agreements with exception of the discrimination policy.

Requirements for Statement of Need

The statement of need describes the history and current situation in the applicant's Tribal community ("community" means the applicant's Tribe, village, Tribal organization, or consortium of Tribes or Tribal organizations). The statement of need provides the facts and evidence that support the need for the project and established that the Tribe/Tribal organization or UIO understands the problems and can reasonably address them and provides background information on the Tribe, Tribal organization, or UIO. The statement of need must not exceed two single-spaced pages and must be type written, have consecutively number pages, use black type not smaller than 12 characters per one inch, and printed on one side of standard size 8½″ x 11″ paper.

Requirements for Project, Budget and Budget Narratives

A. *Project Narrative:* This narrative, or proposed approach, should be a separate Word document that is no longer than 20 pages and must: Be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ x 11″ paper.

Be sure to succinctly address and answer all questions listed under the Project Narrative section and place them under the evaluation review criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they shall not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming familiar with the applicant's activities and accomplishments prior to this grant award. If the narrative exceeds the page limit, only the first 20 pages will be reviewed. The 20-page limit for the narrative does not include the table of contents, abstract, statement of need, work plan, standard forms, Tribal resolutions, budget or budget narrative, and/or other appendix items.

There are five (5) parts to the project narrative:

- Part A—Goals and Objectives;
- Part B—Project Activities;
- Part C—Timeline Chart (template provided);
- Part D—Organizational Capacity and Staffing/Administration; and
- Part E—Plan for Local Data Collection.

See below for additional details about what must be included in the narrative.

Part A: Goals and Objectives

- Describe the purpose of the proposed project that includes a clear statement of goals and objectives.
- Address the four (4) broad objectives listed for MSPI Purpose Area #4 and the objectives should be clearly outlined in the project narrative. If the application does not address all four broad objectives, the application will be considered ineligible and will not be reviewed for further consideration.

Part B: Project Activities

- Describe how project activities will increase the capacity of the identified community to plan and improve the coordination of a collaborative behavioral health and wellness service systems.
- Describe anticipated barriers to progress of the project and how the barriers will be addressed.
- Discuss how the proposed approach addresses the local language, concepts, attitudes, norms and values about suicide, and/or substance use.
- Describe how the proposed project will address issues of diversity within the population of focus including age, race, gender, ethnicity, culture/cultural identity, language, sexual orientation, disability, and literacy.
- If the applicant plans to include an advisory body in the project, describe its membership, roles and functions, and frequency of meetings.
- Describe how the efforts of the proposed project will be coordinated with any other related Federal grants, including IHS, the Substance Abuse and Mental Health Services Administration (SAMHSA), or Bureau of Indian Affairs (BIA) services provided in the community (if applicable).
- Identify any other organization(s) that will participate in the proposed project. Describe their roles and responsibilities and demonstrate their commitment to the project. Include a list of these organizations as an *attachment* to the application. In the attached list, indicate the organizations that the Tribe/Tribal organization or UIO has worked with or currently works with. [Note: The attachment will not count as part of the 20-page maximum].

Part C: Timeline Chart

- Provide a one-year (first project year) timeline chart depicting a realistic timeline for the project period showing key activities, milestones, and responsible staff. These key activities should include the requirements outlined for MSPI Purpose Area #4. [Note: The timeline chart should be included as part of the Project Narrative as specified here. It should not be placed as an attachment.]. The timeline chart should not exceed one-page.

Part D: Organizational Capacity and Staffing/Administration

- Describe the management capability and experience of the applicant Tribe, Tribal organization, or UIO and other participating organizations in administering similar grants and projects.
- Discuss the applicant Tribe, Tribal organization, or UIO experience and capacity to provide culturally appropriate/competent services to the community and specific populations of focus.
- Describe the resources available for the proposed project (*e.g.,* facilities, equipment, information technology systems, and financial management systems).
- Describe how project continuity will be maintained if/when there is a change in the operational environment (*e.g.,* staff turnover, change in project leadership, change in elected officials) to ensure project stability over the life of the grant.
- Provide a complete list of staff positions for the project, including the Project director, project coordinator, and other key personnel, showing the role of each and their level of effort and qualifications.
- Include position descriptions as *attachments* to the project proposal/application for the project director, project coordinator, and all key personnel. Position descriptions should not exceed one page each. [Note: Attachments will not count against the 20 page maximum].
- For individuals that are identified and currently on staff, include a biographical sketch (not to include personally identifiable information) for the project director, project coordinator, and other key positions as *attachments* to the project proposal/application. Each biographical sketch should not exceed one page. Reviewers will not consider information past page one. [Note: Attachments will not count against the 20 page maximum]. *Do not* include any of the following:
  - Personally Identifiable Information;
  - Resumes; or
  - Curriculum Vitae.

Part E: Plan for Local Data Collection

- Describe the applicant's plan for gathering local data, submitting data requirements, and document the applicant's ability to ensure accurate data tracking and reporting. Describe how members of the community (including youth and families that may receive services) will be involved in the planning, implementation, and data collection.

Funded projects are required to coordinate data collection efforts with their assigned regional Technical Assistance (TA) Provider for evaluation. The regional TA Providers for evaluation are the Tribal Epidemiology Centers (TECs) for each IHS Area and additionally, the National Indian Health Board and the National Council of Urban Indian Health will also provide TA for evaluation. The TA Providers for evaluation are funded by IHS. Awardees will work with their assigned regional TA Provider for evaluation to measure and track the core processes, outcomes, impacts, and benefits associated with the MSPI. Awardees shall collect local data related to the project and submit it in annual progress reports to IHS and will assist the national MSPI evaluation. The purpose of the national evaluation is to assess the extent to which the projects are successful in achieving project goals and objectives and to determine the impact of MSPI-related activities on individuals and the larger community.

Progress reporting will be required on national data elements related to program outcomes and financial reporting for all awardees. Progress reports will be collected annually throughout the project on a web-based data portal. Progress reports include the compilation of quantitative (numerical) data (*e.g.,* number served, screenings completed, etc.) and qualitative or narrative (text) data (*e.g.,* program accomplishments, barriers to implementation, and description of partnership and coalition work).

The reporting portal will be open to project staff on a 24 hour/7 day week basis for the duration of each reporting period. In addition, Federal financial report forms (SF–425), which document funds received and expended during the reporting period, will be available. Required financial forms will be available from the IHS DGM, and other required forms will be provided throughout the funding period by DGM or the IHS Division of Behavioral Health (DBH). All document/materials are to be submitted online. Technical assistance for web-based data entry and for the completion of required fiscal documents will be timely and readily available to awardees by assigned IHS Project Officers.

B. Budget and Budget Narrative: The applicant is required to include a line item budget for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative for Project Year 1 only. The budget should match the scope of work described in the project narrative for the first project year expenses only. The page limitation should not exceed four single-spaced pages.

The applicant must provide a narrative justification for all items included in the proposed line item budget supporting the mission and goals of MSPI, as well as a description of existing resources and other support the applicant expects to receive for the proposed project. Other support is defined as funds or resources, whether Federal, non-Federal or institutional, in direct support of activities through fellowships, gifts, prizes, in-kind contributions or non-Federal means. (This should correspond to Item #18 on the applicant's SF–424, Estimated Funding.) Provide a narrative justification supporting the development or continued collaboration with other partners regarding the proposed activities to be implemented.

Templates

Templates are provided for the project narrative, timeline chart, budget and budget narrative, and biographical sketch. These templates can be located and download at the MSPI Web site at: *https://www.ihs.gov/mspi.*

3. Submission Dates and Times

Applications must be submitted electronically through *Grants.gov* by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the electronic application process, contact *Grants.gov* Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), DGM Grant Systems Coordinator, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM (see Section IV.6 below for additional information). The waiver must: (1) Be documented in writing (emails are acceptable), *before* submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov.* Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval *must* be submitted along with the hardcopy of the application that is mailed to DGM. Paper applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. *Intergovernmental Review*

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. *Funding Restrictions*

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

6. *Electronic Submission Requirements*

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Find Grant Opportunities" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, the applicant must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact *Grants.gov* Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting *Grants.gov,* obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov.* Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to fifteen working days.
- Please use the optional attachment feature in *Grants.gov* to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this funding announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The DGM will download the application from *Grants.gov* and provide necessary copies to the appropriate agency officials. Neither the DGM nor the DBH will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access it through *http://fedgov.dnb.com/webform,* or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended ("Transparency Act"), to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 20 page narrative should include only the first year of activities. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 65 points is required for funding. Points are assigned as follows:

1. Criteria

Applications will be reviewed and scored according to the quality of responses to the required application components in Sections A–E below. In developing the required sections of this application, use the instructions provided for each section, which have been tailored to this program. The application must use the five sections (Sections A–E) listed below in developing the application. The applicant must place the required information in the correct section or it will not be considered for review. The application will be scored according to how well the applicant addresses the requirements for each section listed below. The number of points after each heading is the maximum number of points the review committee may assign to that section. Although scoring weights are not assigned to individual bullets, each bullet is assessed deriving the overall section score.

A. Statement of Need (History and Current Situation in Your Tribal Community) (35 Points)

The statement of need should not exceed two single-spaced pages.

(1) Identify the proposed catchment area and provide demographic information on the population(s) to receive services through the targeted systems or agencies, *e.g.,* race, ethnicity, Federally recognized Tribe, language, age, socioeconomic status, sexual identity (sexual orientation, gender identity), and other relevant factors, such as literacy. Describe the stakeholders and resources in the catchment area that can help implement the needed infrastructure development.

(2) Based on the information and/or data currently available, document the prevalence of suicide ideations, attempts, clusters (groups of suicides or suicide attempts or both that occurred close together in time and space), and completions, and substance use rates. For this Purpose Area, the data should be geared toward AI/AN children and youth.

(3) Based on the information and/or data currently available, document the need for an enhanced infrastructure to increase the capacity to implement, sustain, and improve effective substance abuse prevention and/or behavioral health services in the proposed catchment area that is consistent with the purpose of the program and the funding opportunity announcement. Based on available data, describe the service gaps and other problems related to the need for infrastructure development. Identify the source of the data. Documentation of need may come from a variety of qualitative and quantitative sources. Examples of data sources for the quantitative data that could be used are local epidemiologic data (TECs, IHS area offices), state data (*e.g.,* from state needs assessments), and/or national data (*e.g.,* SAMHSA's National Survey on Drug Use and Health or from National Center for Health Statistics/Centers for Disease Control reports, and Census data). This list is not exhaustive; applicants may submit other valid data, as appropriate for the applicant's program.

(4) Describe the current suicide prevention, substance abuse prevention, trauma-related, and mental health promotion activities happening in the applicant's community/communities for Native youth up to and including age 24 and their families. Indicate which organizations/entities are currently offering these activities and where the resources come from to support them.

(5) Describe the current service gaps, including disconnection between available services and unmet needs of Native youth up to and including age 24 and their families.

(6) Describe potential project partners and community resources in the catchment area that can participate in the planning process and infrastructure development.

B. Project Narrative/Proposed Approach (20 Points)

The project narrative required components (listed as the six components in "Requirements for Project Narrative") together should not exceed 20 single-spaced pages.

(1) Describe the purpose of the proposed project, including a clear statement of goals and objectives. The proposed project narrative is required to address all four objectives listed for MSPI Purpose Area #4. Describe how achievement of goals will increase system capacity to support the goals and objectives or activities for MSPI Purpose Area #4 by showing how the project will work with Native youth up to and including age 24.

(2) Describe how project activities will increase the capacity of the identified community to plan and improve the coordination of a collaborative behavioral health and wellness service systems. Describe anticipated barriers to progress of the project and how these barriers will be addressed.

(3) Discuss how the proposed approach addresses the local language, concepts, attitudes, norms and values about suicide, and/or substance use.

(4) Describe how the proposed project will address issues of diversity for Native youth up to and including age 24 including race/ethnicity, gender, culture/cultural identity, language, sexual orientation, disability, and literacy.

(5) Describe how Native youth up to and including ages 24 and families may receive services and how they will be involved in the planning, implementation, and data collection and regional evaluation of the project.

(6) Describe how the efforts of the proposed project will be coordinated with any other related Federal grants, including IHS, SAMHSA, or BIA services provided in the community (if applicable).

(7) Provide a timeline chart depicting a realistic timeline for the 1-year project period showing key activities, milestones, and responsible staff. [Note: The timeline chart should be part of the project narrative as specified in the "Requirements for Project Proposals" section. It should not be placed as an attachment.].

(8) If the applicant plans to include an advisory body in the project, describe its membership, roles and functions, and frequency of meetings.

(9) Identify any other organization(s) that will participate in the proposed project. Describe their roles and responsibilities and demonstrate their commitment to the project. Include a list of these organizations as an *attachment* to the project proposal/application. In the attached list, indicate the organizations that the Tribe/Tribal organization or UIO has worked with or currently works with. [Note: The attachment will not count as part of the 20-page maximum.]

C. Organizational Capacity and Staffing/Administration (15 Points)

(1) Describe the management capability and experience of the applicant Tribe, Tribal organization, or UIO and other participating organizations in administering similar grants and projects.

(2) Identify the department/division that will administer this project. Include a description of this entity, its function and its placement within the organization (Tribe, Tribal organization, or UIO). If the program is to be managed by a consortium or Tribal organization, identify how the project office relates to the member community/communities.

(3) Discuss the applicant Tribe, Tribal organization, or UIO experience and capacity to provide culturally appropriate/competent services to the community and specific populations of focus.

(4) Describe the resources available for the proposed project (*e.g.*, facilities, equipment, information technology systems, and financial management systems).

(5) Describe how project continuity will be maintained if/when there is a change in the operational environment (*e.g.*, staff turnover, change in project leadership, change in elected officials) to ensure project stability over the life of the grant.

(6) Provide a list of staff positions for the project, including the Behavioral Health staff, project director, project coordinator, and other key personnel, showing the role of each and their level of effort and qualifications. Demonstrate successful project implementation for the level of effort budgeted for the behavioral health staff, project director, project coordinator, and other key staff.

(7) Include position descriptions as *attachments* to the application for the behavioral health staff, project director, project coordinator, and all key personnel. Position descriptions should not exceed one page each. [Note: Attachments will not count against the 20 page maximum].

(8) For individuals that are currently on staff, include a biographical sketch (not to include personally identifiable information) for each individual that will be listed as the behavioral health staff, project director, project coordinator, and other key positions. Describe the experience of identified staff in mental health promotion, suicide and substance abuse prevention work in the community/communities. Include each biographical sketch as *attachments* to the project proposal/application. Biographical sketches should not exceed one page per staff member. Reviewers will not consider information past page one. [Note: Attachments will not count against the 20 page maximum]. *Do not* include any of the following:

- Personally Identifiable Information;
- Resumes; or
- Curriculum Vitae.

D. Local Data Collection Plan (20 Points)

Describe the applicant's plan for gathering local data, submitting data requirements, and document the applicant's ability to ensure accurate data tracking and reporting. Describe how members of the community (including Native youth up to and including age 24 and families that may receive services) will be involved in the planning, implementation, and data collection.

Funded projects are required to coordinate data collection efforts with their assigned regional TA Provider for evaluation. The regional TA Providers for evaluation are the Tribal Epidemiology Centers (TECs) for each IHS Area and additionally, the National Indian Health Board and the National Council of Urban Indian Health will also provide TA for evaluation. The TA Providers for evaluation are funded by IHS. Awardees will work with their assigned regional TA Provider for evaluation to measure and track the core processes, outcomes, impacts, and benefits associated with the MSPI. Awardees shall collect local data related to the project and submit it in annual progress reports to IHS and will assist the national MSPI evaluation. The purpose of the national evaluation is to assess the extent to which the projects are successful in achieving project goals and objectives and to determine the impact of MSPI-related activities on individuals and the larger community.

Progress reporting will be required on national selected data elements related to program outcomes and financial reporting for all awardees. Progress reports will be collected annually throughout the project on a web-based data portal. Progress reports include the compilation of quantitative (numerical) data (*e.g.*, number served, screenings completed, etc.) and qualitative or narrative (text) data (*e.g.*, program accomplishments, barriers to implementation, and description of partnership and coalition work).

E. Budget and Budget Narrative (10 Points)

The applicant is required to include a line item budget for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative for Project Year 1 only. The budget should match the scope of work described in the project narrative for the first project year expenses only. The budget and budget narrative must not exceed four single-spaced pages.

The applicant must provide a narrative justification of the items included in the proposed line item budget supporting the mission and goals of MSPI, as well as a description of existing resources and other support the applicant expects to receive for the proposed project. Other support is defined as funds or resources, whether Federal, non-Federal or institutional, in direct support of activities through fellowships, gifts, prizes, in-kind contributions or non-Federal means (this should correspond to Item #18 on the applicant's SF–424, Estimated Funding). Provide a narrative justification supporting the development or continued collaboration with other partners regarding the proposed activities to be implemented.

The Budget and Budget Narrative the applicant provides will be considered by reviewers in assessing the applicant's submission, along with the material in the Project Narrative. Applicants should ensure that the budget and budget narrative are aligned with the project narrative.

Additional documents can be uploaded as Appendix Items in *Grants.gov.*

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.*, data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the IHS program to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding.

Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.*, budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the grants management officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 65 points, and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application submitted. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be "Approved", but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2016 the approved but unfunded application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Grants are administered in accordance with the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, "Cost Principles," located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, "Audit Requirements," located at 45 CFR part 75, subpart F.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes*. For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under "Agency Contacts" or the main DGM office at (301) 443–5204.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a "Grant Note" in GrantSolutions. Personnel responsible for submitting reports (*e.g.*, project director, project coordinator, grants coordinator, etc.) will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final program progress report must be submitted within 90 days of expiration of the budget/project period at the end of the funding cycle. Additional information for reporting and associated requirements will be included in the "Programmatic Terms and Conditions" in the official NoA, if funded.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at *http://www.dpm.psc.gov*. It is recommended that the applicant also send a copy of the FFR (SF–425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Post Conference Grant Reporting

This section is only required if the applicant has included a "conference" in the proposed scope of work and intends on using funding to plan and conduct a conference or meeting during the project period. The following requirements were enacted in Section 3003 of the Consolidated Continuing Appropriations Act, 2013, and Section 119 of the Continuing Appropriations Act, 2014; *Office of Management and Budget Memorandum M–12–12:* All HHS/IHS awards containing grants funds allocated for conferences will be required to complete a mandatory post award report for all conferences. Specifically: The total amount of funds provided in this award/cooperative agreement that were spent for "Conference X", must be reported in final detailed actual costs *within 15 days of the completion of the conference.* Cost categories to address should be: *(1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other.*

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy Web site at: *http://www.ihs.gov/dgm/policytopics/.*

E. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see *http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/.*

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see *http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html*; and *http://www.hhs.gov/civil-rights/index.html.* Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html.* Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html* or call 1–800–368–1019 or TDD 1–800–537–7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at *http://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53.*

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS.

Recipients will be required to sign the HHS–690 Assurance of Compliance form which can be obtained from the following Web site: *http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf,* and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW., Washington, DC 20201.

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) before making any award in excess of the simplified acquisition threshold (currently $150,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, Maryland 20857. (Include "Mandatory Grant Disclosures" in subject line), *Office:* (301) 443–5204, *Fax:* (301) 594–0899, *Email: Robert.Tarwater@ihs.gov. and*

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW., Cohen Building, Room 5527, Washington, DC 20201. URL: *http://oig.hhs.gov/fraud/report-fraud/index.asp.* (Include "Mandatory Grant Disclosures" in subject line), *Fax:* (202) 205–0604 (Include "Mandatory Grant Disclosures" in subject line) or *email: MandatoryGranteeDisclosures@oig.hhs.gov.*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Audrey Solimon, Public Health Analyst, National MSPI/DVPI Program Coordinator, Division of Behavioral Health, 5600 Fishers Lane, Mail Stop: 08N34–A, Rockville, MD 20857, *Phone:* (301) 590–5421, *Fax:* (301) 594–6213, *Email: Audrey.Solimon@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Donald Gooding, Grants Management Specialist, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, *Phone:* (301) 443–2298, *Fax:* (301) 594–0899, *Email: Gooding.Donald@ihs.gov.*

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, e3(301) 443–2114; or the DGM main line (301) 443–5204, *Fax:* (301) 594–0899, *Email: Paul.Gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: June 16, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–15111 Filed 6–24–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Tissue Chip Testing Center.

Date: July 26, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, Room 1037, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1073, Bethesda, MD 20892, (301) 435–1348, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: June 21, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15060 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Opportunities for Collaborative Research at the NIH Clinical Center.

Date: July 20, 2016.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Rapid Zika R21.

Date: July 21, 2016.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephanie L. Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 21, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15064 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Implementation and Dissemination Science for HIV/AIDS.

Date: July 8, 2016.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shalanda A Bynum, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892; 301–755–4355; *bynumsa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: July 13–14, 2016.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892; 301–435–5575; *hamannkj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: July 18–19, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street NW., Washington, DC 20037.

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892; 301–806–6596; *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bacterial Pathogenesis and Host Interactions.

Date: July 18, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:*Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892; 301–435–0903; *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Gastrointestinal and Liver Pathophysiology and Toxicology.

Date: July 20–21, 2016.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892; 301–435–1198; *sahaia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 21, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15054 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702, Tel. 240–276–5515 or email *ncitechtransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: Biomarker signature development: microRNAs as biodosimetry markers.

Description of Technology:

Alterations in microRNAs (miRNAs), a type of small non-coding RNAs, have been reported in cells/tumors subjected to radiation exposure, implying that miRNAs play an important role in cellular stress response to radiation.

Researchers at the National Cancer Institute evaluated small non-coding RNAs, long non-coding RNAs (lncRNA), and mRNA as potential non-invasive biomarkers for radiation biodosimetry. While the use of miRNAs as radiation biomarkers has been reported, the integrated use of miRNAs, mRNAs and lncRNAs to accurately determine radiation doses is novel and has not been published. The researchers characterized a unique method of examining miRNA levels along with levels of its target mRNA and lncRNA to determine radiation exposure using whole blood samples from mice exposed to 2, 4, 8, 12 and 15 Gy irradiation. In doing so, they discovered distinct miRNA, mRNA and lncRNA biomarker signatures that inform degree of radiation exposure.

Integrated analysis of miRNA, mRNAs, and lncRNAs to assess radiation exposure after mass-casualty incidents could provide a valuable tool in identifying biomarkers, and in the development and appropriate implementation of effective medical countermeasures. This application could potentially also be used to immediately detect, and therefore circumvent or mitigate non-specific injury from cancer radiotherapy treatments.

Potential Commercial Applications:

- Diagnostic for radiation exposure, including for therapeutic procedures.

Value Proposition:

- Blood-based biomarker assay for circulating miRNAs.
- Could be developed as part of point-of-care and high-throughput screening platforms.
- Immediate medical care based on amount of radiation exposure is critical for giving appropriate care to affected individuals.

Development Stage:

In-vivo testing.

Inventor(s):

Molykutty Aryankalayil (NCI), Norman Coleman (NCI), Adeola Makinde (NCI).

Intellectual Property:

HHS Reference No. E–066–2015/0–US–01 US Provisional Application 62/244,044 (HHS Reference No. E–066–2016/0–US–01) filed October 20, 2015 entitled "Biomarker signature development: microRNAs as biodosimetry markers"

Collaboration Opportunity: Researchers at the NCI seek parties interested in licensing or co-development for microRNA biomarker signatures as biodosimetry markers.

Contact Information:

Requests for copies of the patent application or inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email: *john.hewes@nih.gov* or phone: 240–276–5515.

Dated: June 20, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–15059 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 15–16, 2016.

Open: September 15, 2016, 8:00 a.m. to 2:30 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; Administrative and Program Developments; and an Overview of the NINDS Intramural Program.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: September 15, 2016, 2:30 p.m. to 4:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: September 15, 2016, 4:45 p.m. to 5:15 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' Reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: September 16, 2016, 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Director of Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: June 21, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15068 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Molecular and Cellular Biology Study Section.

Date: July 18, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166,*roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–16–003: Environmental Influences on Child Health Outcomes Patient Reported Outcomes Research Resource Core (ECHO PRO).

Date: July 19, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genetics of Diseases.

Date: July 19, 2016.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219,*currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell and Molecular Biology.

Date: July 19, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Ross D Shonat, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6196, MSC 7804, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; NeuroAIDS and other End-Organ Diseases Study Section.

Date: July 21–22, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Biology of Infectious Diseases Agents, Drug Resistance and Drug Discovery.

Date: July 21, 2016.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 21, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15056 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Urologic and Urogynecologic Small Business Applications.

Date: July 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501; *morrisr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bacterial and Eukaryotic Molecular Genetics.

Date: July 13, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892; 301–435–4511; *ronald.adkins@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; R15 AREA Grant Review.

Date: July 13, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael M. Sveda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892; 301–435–3565; *svedam@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; CIDR Conflict Review.

Date: July 15, 2016.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Panniers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892; (301) 435–1741; *pannierr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology and Bioengineering.

Date: July 18–19, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892; 301–435–2902; *gubina@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 21, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15055 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Data Analysis and Epidemiology Grant Applications.

Date: July 18–19, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 21, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15061 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical Cooperative Agreement and Clinically-Oriented Applications.

Date: July 28, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 5635 Fisher Lane, Rockville, MD 20814 (Telephone Conference Call).

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 21, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15063 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is co-owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702, Tel. 240–276–5515 or email *ncitechtransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: Anti- B-Cell Maturation Antigen Antibodies for Developing Cancer Therapeutics

Keywords: BCMA, Antibody, Immunotoxin, Chimeric Antigen Receptor (CAR), Antibody-drug Conjugate (ADC), Bispecific Antibody, Cancer, Myeloma,

Description of Technology: Multiple Myeloma is a subtype of leukemia that originates in bone marrow, where normal plasma cells are produced. Although FDA-approved antibody-based therapy is available for other B-cell malignancies, no effective antibody-based therapies are available for MM due to the lack of specific target antigen on MM cells. BCMA (B-Cell Maturation Antigen), is a membrane antigen selectively expressed on mature B-lymphocytes and in all MM cells from patients. Thus, BCMA shows promise as a target for immune-based therapy.

This technology concerns the generation of several monoclonal antibodies against BCMA. These antibodies can be utilized therapeutically in several ways, including as recombinant immunotoxins, chimeric antigen receptors (CARs), antibody-drug conjugates (ADCs), bispecific antibodies, and as unconjugated antibodies. The antibodies can also be use in diagnostic applications. It is important to note that several conjugated immunotoxins using the antibodies of this invention have already exhibited high efficacy against MM cells in recent *in vitro* studies.

Potential Commercial Applications:

- Therapeutic Uses
  - Use as an unconjugated antibody
  - Use as a targeting moiety for immunoconjugates such as CARs, ADCs, immunoconjugates, bispecific antibodies, etc.
- Diagnostic agent for detecting and monitoring BCMA-expressing malignancies

Value Proposition:

- First to market potential—There are no current targeted therapeutics for BCMA
- High specificity and binding to BCMA results in less non-specific cell killing, therefore fewer potential side-effects for the patient
- Chimeric Antigen Receptor-based therapies have been successful against B-cell lineage cancer; an anti-BCMA CAR represents a highly effective therapeutic candidate

Development Stage: In-vitro testing.

Inventor(s): Ira Pastan (NCI), Tapan Bera (NCI), Satoshi Nagata (Sanford Research Center), and Tomoko Ise (Sanford Research Center).

Intellectual Property:

US Provisional Application 62/255,255 (HHS Reference No. E–010–2016/0–US–01) filed November 13, 2015 entitled "Anti-BCMA Polypeptides and Conjugates";

US Provisional Application 62/257,493 (HHS Reference No. E–010–2016/1–US–01) filed November 19, 2015 entitled "Anti-BCMA Polypeptides and Proteins"

Contact Information: Requests for copies of the patent application or inquiries about licensing, and co-development research collaborations should be sent to John D. Hewes, Ph.D. email: *john.hewes@nih.gov* or phone: 240–276–5515.

Dated: June 20, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–15057 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical Cooperative Agreement Applications.

Date: July 25, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 5635 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 21, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15062 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, F30 Conflict Review.

Date: July 7, 2016.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Elizabeth Webber, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–1917, *webbere@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Small Vessel Vascular Contributions to Cognitive Impairment and Dementia, (VCID) Biomarkers.

Date: July 13, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Joel Saydoff, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *Joel.saydoff@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 21, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15070 Filed 6–24–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21277; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before June 4, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by July 12, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National

Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 4, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

ALABAMA

Montgomery County

Wharton—Chappell House, 1020 Maxwell Blvd., Montgomery, 16000445

COLORADO

Arapahoe County

Key Savings and Loan Association Building, 3501 S. Broadway, Englewood, 16000447

Denver County

Peoples Presbyterian Church, 2780 York St., Denver, 16000448

CONNECTICUT

Fairfield County

Westport Center Historic District, Avery Pl., Bay Elm & Main Sts., Imperial & Myrtle Aves., Church & Violet Lns., Post Rd., E., Westport, 16000449

Litchfield County

Baldwin, Amos, House, 92 Goshen St., E., Norfolk, 16000450

GEORGIA

Henry County

Locust Grove Historic District, Centered along GA 42 between Hi-Hope Dr. & Grove Rd., Locust Grove, 16000451

HAWAII

Hawaii County

Christ Church Episcopal and Churchyard, HI 11 at Konawaena School Rd., Kealakekua, 16000452

MASSACHUSETTS

Franklin County

Shelburne Free Public Library, 233 Shelburne Center Rd., Shelburne, 16000453

Suffolk County

Governor Shirley Square Historic District, Dudley, Hampden, Dunmore & Magazine Sts., Blue Hill & Mt. Pleasant Ave., Boston, 16000454

Worcester County

District No. 5 School, 311 East St., Petersham, 16000455

NEW JERSEY

Camden County

Cooper River Park Historic District, Roughly bounded by Kaighn, Roberts, Glover & Narbeth Aves., N. Park, S. Edge Park & S. Park Drs., Kings Hwy., Collingswood Borough, 16000456

NORTH DAKOTA

Grand Forks County

St. Michael's Parochial School, 504 5th Ave., N., Grand Forks, 16000457

OHIO

Butler County

Downtown Historic District, 135–245 & 250–358 High, 9–21 N. 3rd, 6–222 S. 2nd, 2–306 & 11–301 S. 3rd, 105–309 & 224–234 Court & 311–316 Ludlow Sts., Hamilton, 16000458

Franklin County

Lubal Manufacturing and Distributing Company, The, 373–375 W. Rich St., Columbus, 16000459

Greene County

Wright Brothers Hill—Memorial, Memorial Dr., Wright-Patterson AFB, 16000460

Montgomery County

Bimm Fireproof Warehouse, (Webster Station Area, Dayton, Ohio MPS) 315 E. 1st St., Dayton, 16000461

Delco Building, (Webster Station Area, Dayton, Ohio MPS) 329 E. 1st St., Dayton, 16000462

SOUTH CAROLINA

Greenville County

Wilkins, William and Harriet, House, 105 Mills Ave., Greenville, 16000463

WASHINGTON

King County

University of Washington Faculty Club, 4020 E. Stephens Way, Seattle, 16000464

WISCONSIN

Green Lake County

Berlin High School, 289 E. Huron St., Berlin, 16000465

Authority: 60.13 of 36 CFR part 60.

Dated: June 9, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–15084 Filed 6–24–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21300]; [PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Museum of Anthropology at Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Anthropology at Washington State University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Museum of Anthropology at Washington State University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Museum of Anthropology at Washington State University at the address in this notice by July 27, 2016.

ADDRESSES: Mary Collins, Director Emeritus of the Museum of Anthropology at Washington State University, Pullman, WA 99164–49140, phone (509) 592–6929, email *collinsm@wsu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C.

3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Museum of Anthropology at Washington State University. The human remains and associated funerary objects were removed from Chagvan Bay, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Museum of Anthropology at Washington State University in conjunction with the Native Village of Goodnews Bay, and the Platinum Traditional Village.

History and Description of the Remains

In 1962, human remains representing, at minimum, three individuals were removed from the archeological site known in the Alaska system as site XHI–001, in Chagvan Bay, AK. The burial was found eroding out of the south spit area of the Bay and was collected by archeologists from Washington State University, led by Dr. Robert Ackerman, who was doing studies in the vicinity. The human remains have been in Dr. Ackerman's research lab since 1962. No published description or analysis of the human remains has been done. No known individuals were identified. The four associated funerary objects are 1 semi-lunar metal knife blade, 1 metal knife blade, and 2 tabular stones.

The human remains represent one female and two males, all of whom are adults. All were found in a single burial box. The associated funerary objects are of historic manufacture, dating the human remains to the historic period. Geographical, archeological, and historical information suggest that the area of Chagvan Bay is within the traditional subsistence territory of the communities of the Native Village of Goodnews Bay and the Platinum Traditional Village.

Determinations Made by the Museum of Anthropology at Washington State University

Officials of the Museum of Anthropology at Washington State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Native Village of Goodnews Bay and Platinum Traditional Village.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mary Collins, Director of the Museum of Anthropology at Washington State University, Pullman, WA 99164–49140, telephone (509) 592–6929, email *collinsm@wsu.edu,* by July 27, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Native Village of Goodnews Bay and Platinum Traditional Village may proceed.

The Museum of Anthropology at Washington State University is responsible for notifying the Native Village of Goodnews Bay and Platinum Traditional Village that this notice has been published.

Dated: June 13, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–15245 Filed 6–24–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21298; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before June 11, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by July 12, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 11, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

ALASKA

Ketchikan Gateway Borough-Census Area

Downtown Ketchikan Historic District, Front, Main, Mission, Dock & Mill Sts., Ketchikan, 16000467

CALIFORNIA

Fresno County

Big Creek Hydroelectric System Historic District, Roughly from Big Creek to Northern Los Angeles, Big Creek, 16000468

Madera County

Devils Postpile Cabin Site, Minaret Summit Rd., Mammoth Lakes, 16000473

COLORADO

Mesa County

Department of Energy Grand Junction Office, 2591 Legacy Way, Grand Junction, 16000470

TENNESSEE

Davidson County

Geist, John, and Sons, Blacksmith Shop and House (Boundary Decrease), 311 & 313 Jefferson St., Nashville 16000471

House of David Recording Studio Complex, (Music Industry Resources, Nashville, Tennessee MPS), 1205–1207 16th Ave. S., Nashville, 16000472

WASHINGTON

King County

Seattle Art Museum, 1400 E. Prospect St., Seattle, 16000474

WISCONSIN

Manitowoc County

Mirro Aluminum Company Plant No. 3, 2402 Franklin St., Manitowac, 16000475

Milwaukee County

Mansfield, George C., Company Building, 1300 N. 4th St., Milwaukee, 16000476

A request for removal has been received for the following resources:

LOUISIANA

Acadia Parish

Lewis & Taylor Lumberyard Office, 403 E. Louisiana Ave., Rayne, 95000812

Ascension Parish

Kraemer House, Off US 61, Prairieville, 84001250

Avoyelles Parish

Clarendon Plantation House, LA 29, Evergreen, 85000970

Calcasieu Parish

Arcade Theater, 822 Ryan St., Lake Charles, 78001420

Authority: 60.13 of 36 CFR part 60.

Dated: June 14, 2016.

Christopher J. Hetzel,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–15083 Filed 6–24–16; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–978]

Certain Chassis Parts Incorporating Movable Sockets and Components Thereof; Commission Determination To Not Review an Initial Determination Granting a Joint Motion To Terminate the Investigation on the Basis of Settlement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to not review the administrative law judge's (ALJ) initial determination (ID) (Order No. 8, the subject ID) granting a joint motion to terminate the above-referenced investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, (202) 205–2000. General information concerning the Commission may also be obtained at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 28, 2015, based on a complaint filed by Federal-Mogul Motorparts Corporation (Federal-Mogul) of Southfield, MI. 80 FR 80798 (Dec. 28, 2015). The complaint alleged a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain chassis parts incorporating movable sockets and components thereof by reason of infringement of one or more of claims 1–5 of U.S. Patent No. 6,202,280 patent. *Id.* The Commission's Notice of Investigation named Mevotech, L.P. of Toronto, Canada (Mevotech) as a respondent and the Office of Unfair Import Investigations (OUII) as a party. *Id.*

On March 24, 2016, Federal-Mogul and Mevotech filed a motion to terminate this Investigation on the basis of a settlement agreement. *See* Order No. 8, at 1 (hereinafter the Subject ID). The private parties provided a confidential, unredacted copy of their settlement agreement and a proposed redacted, public version. Subject ID at 1–2. On March 29, 2016, OUII filed a response in support of the motion. *Id.* at 1. In response to the ALJ's request, the private parties thereafter submitted a revised public version of their settlement agreement and arguments in support of their redactions. *Id.* On April 26, 2016, the ALJ issued Order No. 6, which concluded that the public version of the settlement agreement was over-redacted. *Id.* On May 3, 2016, Mevotech moved for reconsideration of Order No. 6. *Id.* On May 24, 2016, the ALJ issued Order No. 7, which granted the motion and concluded that the revised public version of the settlement agreement was properly redacted. Order No. 7, at 2; *see* Subject ID at 1.

Also on May 24, 2016, the ALJ issued the Subject ID, which granted the private parties' motion to terminate the investigation on the basis of their settlement. Subject ID at 3. The ALJ concluded that the private parties complied with Commission Rule 210.21(b)(1), which governs termination based on a settlement agreement, and that terminating the investigation on the basis of the settlement poses no threat to the public interest. *Id.* at 2–3. No parties petitioned for review of the Subject ID.

The Commission hereby determines to not review the Subject ID. This investigation is terminated.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 22, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15126 Filed 6–24–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–549 and 731–TA–1299, 1300, 1302, and 1303 (Final)]

Circular Welded Carbon-Quality Steel Pipe From Oman, Pakistan, the United Arab Emirates, and Vietnam; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–549 and 731–TA–1299, 1300, 1302, and 1303 (Final) pursuant to the Tariff Act of 1930 ("the Act") to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of circular welded carbon-quality steel pipe from Oman, Pakistan, the United Arab Emirates, and Vietnam, provided for in subheadings 7306.19.10, 7306.19.51, 7306.30.10, 7306.30.50, 7306.50.10, and 7306.50.50

of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be sold at less-than-fair-value and subsidized by the government of Pakistan.[1]

DATES: Effective June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman ((202) 205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Pakistan of circular welded carbon-quality steel pipe, and that such products from Oman, Pakistan, the United Arab Emirates, and Vietnam are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on October 28, 2015, by Bull Moose Tube Company (Chesterfield, Missouri), EXLTUBE (N. Kansas City, Missouri), Wheatland Tube, a division of JMC Steel Group (Chicago, Illinois), and Western Tube and Conduit (Long Beach, California).

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 28, 2016, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Thursday, October 13, 2016, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 6, 2016. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on October 7, 2016, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 5, 2016. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 25, 2016. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before October 25, 2016. On November 10, 2016, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 14, 2016, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

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[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (O.D.) not more than nominal 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.,* black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.,* American Society for Testing and Materials International (ASTM), proprietary, or other), generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing)." For a full description of the scope of these investigations, including product exclusions, see *Circular Welded Carbon-Quality Steel Pipe From Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 36867, June 8, 2016.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 21, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–15053 Filed 6–24–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–557]

Aluminum: Competitive Conditions Affecting the U.S. Industry: Proposed Information Collection; Comment Request; Aluminum: Competitive Conditions Affecting the U.S. Industry Questionnaire

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Paperwork Reduction Act of 1995, the U.S. International Trade Commission (Commission) hereby gives notice that it plans to submit a request for approval of a questionnaire to the Office of Management and Budget for review and requests public comment on its draft collection.

DATES: To ensure consideration, written comments must be submitted on or before August 24, 2016.

ADDRESSES: Direct all written comments to Karl Tsuji, Project Leader, or Mihir Torsekar, Deputy Project Leader, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436 (or via email at *karl.tsuji@usitc.gov* or *mihir.torsekar@usitc.gov*).

Additional Information: Copies of the questionnaire and supporting investigation documents may be obtained from project leader Karl Tsuji (*karl.tsuji@usitc.gov* or 202–205–3434) or deputy project leader Mihir Torsekar (*mihir.torsekar@usitc.gov* or 202–205–3350). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Purpose of Information Collection: The information requested by the questionnaire is for use by the Commission in connection with Investigation No. 332–557, *Aluminum: Competitive Conditions Affecting the U.S. Industry,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the House Committee on Ways and Means (the Committee), 81 FR 21591, April 12, 2016. The Committee anticipated that the Commission would need to include a survey to help develop detailed information on the domestic aluminum market and industry. The Commission expects to deliver the results of its investigation to the Committee by June 27, 2017.

Summary of Proposal

(1) Number of forms submitted: 1.

(2) Title of form: Aluminum: Competitive Conditions Affecting the U.S. Industry Questionnaire.

(3) Type of request: New.

(4) Frequency of use: Industry questionnaire, single data gathering, scheduled for 2016.

(5) Description of respondents: U.S. producers of unwrought and wrought aluminum.

(6) Estimated number of respondents: 260.

(7) Estimated total number of hours to complete the questionnaire per respondent: 12 hours.

(8) Information obtained from the questionnaire that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

I. Abstract

The House Committee on Ways and Means (the Committee) has directed the Commission to produce a report that examines relevant factors affecting global competitiveness of the U.S. aluminum industry. The Committee has requested that the report (1) provide an overview of the aluminum industry in the United States and other major global producing and exporting countries; (2) describe recent trends and developments in the global market for aluminum; (3) compare competitive strengths and weaknesses of aluminum production and exports in the United States and other major producing and exporting countries; (4) identify factors driving capacity and related production changes in countries where unwrought aluminum capacity has significantly increased; and (5) assess the impact of government policies and programs in major foreign aluminum producing and exporting countries. The Committee has anticipated the need for questionnaires in order to develop detailed information on the domestic aluminum market and industry.

II. Method of Collection

Respondents will be mailed a letter directing them to download and fill out a form-fillable PDF questionnaire. Respondents will also receive a follow-up email. Once complete, respondents may submit it by uploading it to a secure Webserver, emailing it to the study team, faxing it, or mailing a hard copy to the Commission.

III. Request for Comments

Comments are invited on (1) whether the proposed collection of information is necessary; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The draft questionnaire and other supplementary documents may be downloaded from the USITC Web site at *https://www.usitc.gov/aluminum.*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

By order of the Commission.

Dated: June 17, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–14835 Filed 6–24–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–962]

Certain Resealable Packages With Slider Devices; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (“ALJ”) has issued a Final Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation of section 337, as amended, 19 U.S.C. 1337. The ALJ recommended a limited exclusion order directed against certain resealable packages with slider devices imported by respondents Inteplast Group, Ltd. of Livingston, New Jersey and Minigrip, LLC of Alpharetta, Georgia, and a cease and desist order directed against respondents. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competition conditions in the United States economy, the production of like or directly competitive articles in the United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in its investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on June 20, 2016. Comments should address whether issuance of an exclusion order and/or cease and desist orders in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the recommended orders;

(iv) indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on July 27, 2016.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 CFR 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337–TA–962”) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 21, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–15093 Filed 6–24–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0096]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Environmental Information (ATF F 5000.29)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of

Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 26, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Shawn Stevens, ATF Industry Liaison, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405, at telephone: 1–877–283–3352. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83–I):* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Environmental Information.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 5000.29.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: The information will help ATF identify any waste product(s) generated as a result of the operations by the applicant and the disposal of the products. The information will help determine if there is any adverse impact on the environment.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 680 respondents will take 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 340 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: June 22, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–15114 Filed 6–24–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act, Emergency Planning and Community Right-to-Know Act, and Comprehensive Environmental Response, Compensation, and Liability Act

On June 20, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Massachusetts, in the lawsuit entitled *United States* v. *J.S.B. Industries, Inc., John P. Anderson, as Trustee of 130 Crescent Ave. Realty Trust, and JMG Andover Street Realty,* Civil Action No. 1:16–cv–11152–DPW.

The United States filed this lawsuit under Section 112(r)(1) of the Clean Air Act, 42 U.S.C. 7412(r)(1), Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11004, 11021, and 11022, and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9603. The United States' complaint seeks civil penalties and injunctive relief in connection with the use and handling of anhydrous ammonia and sulfuric acid at two JSB baked goods facilities located in Chelsea and Lawrence, Massachusetts, respectively.

The Consent Decree requires the defendants to pay a civil penalty of $156,000, plus interest, and perform a supplemental environmental project, projected to cost $119,000, involving the provision of emergency response equipment to the fire departments serving the Chelsea and Lawrence communities.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *J.S.B. Industries, Inc., et al.*, D.J. Ref. Nos. 90–5–2–1–10997 and 90–5–2–1–10997/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–15077 Filed 6–24–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

On June 22, 2016, the Department of Justice lodged a proposed Consent Judgment with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States* v. *Genesco Inc.*, Civil Action No. CV–09–3917.

The proposed Consent Judgment resolves certain claims of the United States, on behalf of the Environmental Protection Agency ("EPA"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, in connection with the Fulton Avenue Superfund Site located in and around the Village of Garden City Park in Nassau County, New York ("Site"), against defendant Genesco Inc. ("Genesco"). The proposed Consent Judgment, *inter alia,* requires Genesco to implement and/or ensure implementation of the EPA's September 30, 2015 First Operable Unit ("OU1") Record of Decision Amendment ("Amended OU1 ROD") for the Site. The proposed Consent Judgment provides that Genesco is entitled to contribution protection as provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2) for matters addressed by the settlement.

The publication of this notice opens a period for public comment on the Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Genesco Inc.*, D.J. Ref. No. 90–11–2–09329. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Judgment may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Judgment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $77.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $12.00.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–15105 Filed 6–24–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed First Amendment to Consent Decree Under the Clean Air Act

On June 9, 2016, the Department of Justice lodged a proposed First Amendment to a Consent Decree with the United States District Court for the Eastern District of Michigan in the lawsuit entitled *United States* v. *Marathon Petroleum Company, LLC, et al.*, Civil Action No. 2:12–cv–11544.

Under the First Amendment to the Consent Decree, Marathon Petroleum Company, LP ("MPC") will install seven flare gas recovery systems ("FGRSs") on thirteen flares at five refineries and operate those FGRSs with minimal downtime. MPC will maintain two extra, interchangeable FGRS compressors for delivery to any of the five refineries on short notice. MPC will shut down one fence line flare at its Detroit Refinery and install nitrogen oxides controls on heaters at its Garyville, Louisiana, and Canton, Ohio refineries as mitigation projects. Marathon will receive deadline extensions for compliance with certain hydrogen sulfide limits at nine flares so that compliance lines up with major turnarounds that are necessary to finalize installation of the FGRSs. Marathon will pay a civil penalty of $326,500.

The publication of this notice opens a period for public comment on the First Amendment to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Marathon Petroleum Company, LLC, et al.*, D.J. Ref. No. 90–5–2–1–09915. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the First Amendment to the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the First Amendment to the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–15128 Filed 6–24–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Walking-Working Surfaces Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Walking-Working Surfaces Standard," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 27, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1218-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Walking-Working Surfaces Standard information collection requirements codified in regulations 29 CFR part 1910, subpart D. The information collection requirements in the Standard protect workers by making them aware of load limits of the floors of buildings, defective portable metal ladders, and the specifications of outrigger scaffolds used. Specifically, regulations 29 CFR 1910.22(d)(1) requires that in every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the building official be marked on plates of approved design that shall be supplied and securely affixed by the owner of the building, or a duly authorized agent, in a conspicuous place in each space to which they relate. Such plates shall not be removed or defaced but, if lost, removed, or defaced, shall be replaced by the owner or his agent. Under section 1910.26(c)(2)(vii), portable metal ladders having defects must be marked and taken out of service until repaired by either the maintenance department or the manufacturer. Section 1910.28(e)(3) specifies that, unless outrigger scaffolds are designed by a licensed professional engineer, they shall be constructed and erected in accordance with table D–16 of the section. It is mandatory that a copy of the detailed drawings and specifications showing the sizes and spacing of members be kept on the job. Occupational Safety and Health Act of 1970 sections 2(b)(9), 6(b)(7), and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655(b)(7) and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0199.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on June 30, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 2, 2016 (81 FR 10918).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0199. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Walking-Working Surfaces Standard.

OMB Control Number: 1218–0199.

Affected Public: Private Sector—businesses or other for profits.

Total Estimated Number of Respondents: 41,540.

Total Estimated Number of Responses: 75,408.

Total Estimated Annual Time Burden: 6,125 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: June 21, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–15102 Filed 6–24–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for the Cascades Job Corps College and Career Academy Pilot Evaluation, New Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed.

A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before August 26, 2016.

ADDRESSES: You may submit comments by either one of the following methods: Email: *ChiefEvaluationOffice@dol.gov;* Mail or Courier: Molly Irwin, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Molly Irwin by telephone at 202–693–5091 (this is not a toll-free number) or by email at *ChiefEvaluationOffice@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Chief Evaluation Office (CEO), U.S. Department of Labor (DOL), is proposing a data collection activity as part of the Cascades Job Corps College and Career Academy Evaluation Pilot Evaluation. The goal of the evaluation is to determine the effectiveness of the Pilot program in improving employment and educational outcomes for youth ages 21 and under. The impact study will randomly assign individuals to receive program services or to a group that cannot access these services but who can participate in other similar programs. The impact study will compare the employment and educational outcomes of the groups to determine the effectiveness of the pilot program. The evaluation also includes an implementation study that will describe the services participants receive through the pilot program as well as provide operational lessons.

This **Federal Register** Notice provides the opportunity to comment on three proposed new information collection activities for the Cascades Job Corps College and Career Academy Evaluation Pilot Evaluation: (1) A baseline survey of sample members in the evaluation, administered at the time of application to the program; and (2) discussion guides for in-person or phone interviews with Cascades staff, leadership in other Job Corps sites, employers, other program partners, and Cascades participants; and (3) postcards mailed to sample members in the evaluation to request address updates.

The baseline survey and discussion guides will provide vital data for the evaluation. The postcards will provide the evaluation with accurate locating information for sample members and thereby improve response rates for the follow-on survey.

II. Review Focus

DOL is soliciting comments concerning the above data collection for the Cascades Job Corps College and Career Academy Pilot Evaluation. DOL is particularly interested in comments that do the following:

- Evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

III. Current Actions

DOL is requesting clearance for the baseline survey of sample members, discussion guides for stakeholder interviews, and postcards mailed to sample members of the Cascades Job Corps College and Career Academy Pilot Evaluation.

Type of Review: New collection.

Title: Cascades Job Corps College and Career Academy Pilot Evaluation.

OMB Number: OMB Control Number 1205—0NEW.

ESTIMATED TOTAL BURDEN HOURS

Activity	Total number of respondents	Number of responses per respondent	Total annual response	Average burden hours per response	Total annual burden hours
Baseline survey	*1,000	1	333.3	.50	167
Discussion guides:					
Center staff	8	2	5.3	1	5.3
Employer and Program partners interviews	9	1	3	1	3
Leadership in other Job Corps sites	3	2	2	1	2
Center participants	18	1	6	1.5	9
Postcards	1,000	**1	333.3	.08	26.7
Total	2,025		682.9		213

* Assumes a sample of 1,000 with a 100 percent response rate.

** Assumes 3 mailings per respondent with an average of 1 response per respondent.

Affected Public: Participants applying for the Cascades Job Corps College and Career Academy; Cascades staff; Leadership in other Job Corps sites; Program partners.

Form(s): Baseline survey; Discussion guides; Postcards.

Total respondents: 2,025.

Annual Frequency: One time.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Stephanie Swirsky,

Deputy Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2016–15121 Filed 6–24–16; 8:45 am]

BILLING CODE 4510–HX–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36619; EA–14–080; NRC–2016–0125]

In the Matter of CampCo, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a confirmatory order (Order) to CampCo,

Inc. (CampCo), to memorialize the agreements reached during an alternative dispute resolution mediation session held on March 22, 2016. This Order will resolve the issues that were identified during an NRC investigation and records inspection related to CampCo's import and distribution of watches containing radioactive material. This Order is effective upon its issuance.

DATES: *Effective Date:* The confirmatory order became effective on June 20, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0125 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0125. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For questions about this Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Susanne Woods, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001; telephone: 301–415–2740, email: *S.Woods@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 20th day of June 2016.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Office of Enforcement.

UNITED STATES OF AMERICA, NUCLEAR REGULATORY COMMISSION

In the Matter of CampCo, Inc., Los Angeles, California

Docket No. 030–36619

License No. 04–23910–01E

EA–14–080

Confirmatory Order Modifying License

I

CampCo, Inc., (CampCo or Licensee) is the holder of Materials License No. 04–23910–01E issued on October 2, 2014, by the U.S. Nuclear Regulatory Commission (NRC) pursuant to Part 30 of title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes CampCo to distribute watches containing byproduct material (tritium, hydrogen-3) to persons exempt from the regulations. The facility is located on the Licensee's site in Los Angeles, California.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on March 22, 2016.

II

The NRC Office of Investigations (OI) conducted investigations in 2013 and 2014 (OI case number report 3–2013–021 and the supplemental report) related to apparent violations by CampCo regarding the distribution of watches containing byproduct material (hydrogen-3) without the required licensing authorization.

On July 7, 2015, the NRC issued a letter to CampCo that detailed the results of the investigation and outlined four apparent violations. The apparent violations involved:

(1) Distributing watches containing tritium (hydrogen-3) without (a) obtaining NRC approval of an amendment for the CampCo's existing license, or (b) obtaining a separate exempt distribution license for these watches, prior to transferring the watches containing byproduct material to unlicensed persons; (2) failing to submit timely required annual reports to the NRC, as required by 10 CFR 32.16(c)(1); (3) failing to provide required information in the annual reports, when the reports were provided upon NRC request; and (4) failing to provide certificates, required by the CampCo license, with each lot distributed.

The failure to either comply with license requirements or obtain a license for the distribution of these watches prior to distributing these products is significant because it resulted in the NRC not being able to conduct its regulatory responsibilities to ensure that the products were safe for distribution to members of the general public. The requirements in 10 CFR 30.3(a) provide reasonable assurance that the transfers and the products intended for use by persons exempt from the regulations meet the applicable requirements. The failure to submit complete and timely required annual reports is significant because it inhibits the process of regulatory oversight. The information in these reports is necessary for the NRC to evaluate potential doses to the public and impact to the environment from the collective dose due to multiple sources. The failure to ensure that each lot of tritium timepieces received is accompanied by the required certificates is significant because these certificates are necessary to ensure and document that the watches distributed were manufactured properly and meet the regulatory requirements for distribution to persons exempt from the regulations.

In the July 7, 2015, letter, the NRC offered CampCo the choice to: (1) Request a Pre-decisional Enforcement Conference (PEC); or (2) request ADR. CampCo chose a PEC. CampCo and NRC conducted a PEC on August 31, 2015.

On December 10, 2015, the NRC issued a Notice of Violation (NOV) and proposed $28,000 civil penalty to CampCo. In the letter transmitting the NOV and proposed civil penalty, the NRC offered CampCo the choice to: (1) Pay the proposed civil penalty and respond in writing to two of the four violations, within 30 days of the date of the letter; or (2) request ADR. CampCo chose ADR.

The NRC determined CampCo actions regarding the first two violations identified in the NOV to be willful. The finding of willfulness in this case was not based on a finding that CampCo deliberately intended to violate NRC requirements, but rather on CampCo's careless disregard in failing to pursue necessary actions to ensure CampCo's compliance.

For all four violations identified in the NOV, the NRC considered whether corrective actions were taken to restore and maintain compliance. CampCo's corrective actions included submitting an application and receiving NRC license approval for exempt-distribution of the subject timepieces and submitting annual reports identified by NRC. Based on its assessment of CampCo's corrective actions, the NRC determined that CampCo took adequate corrective action for Violations 1 and 2. However, for Violations 3 and 4, corrective actions were not adequate. Since there was not sufficient information regarding the corrective actions for Violations 3 and 4, CampCo was required to respond to the NOV for Violations 3 and 4 in order to address corrective actions.

In response to the NRC's December 10, 2015, letter and NOV, CampCo requested ADR. On March 22, 2016, CampCo and the NRC met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, CampCo and the NRC reached a preliminary settlement agreement. The elements of the agreement included corrective actions that CampCo stated were completed as described below and agreed to future actions as follows:

Completed Corrective Actions

1. CampCo submitted an application and received an NRC license approval for exempt distribution of the subject timepieces.

2. CampCo provided annual reports to NRC for calendar years 2010 through 2015 and on February 4, 2016, provided an updated annual report for calendar year 2015 that contained all the information specified by the requirements.

Future CampCo Actions

Communications

1. The President of CampCo will submit an article via social media outlets (*e.g.*, Facebook, Twitter) to consumers of tritium watches.

a. Within 6 months, the President of CampCo will submit a draft of the article to NRC for review and approval.

b. The article will summarize the existence of NRC and Agreement State requirements for watches containing tritium, emphasize the importance of compliance with NRC and Agreement State requirements, and raise awareness of a potential consumer safety hazard for non-compliant watches.

c. Within 15 calendar days of receipt, NRC will approve or provide comments to CampCo.

d. CampCo will incorporate any NRC comments.

e. For further iterations, CampCo will provide updated versions and NRC will provide comments or approval within 15 calendar days of receipt.

f. Within 15 calendar days of NRC approval, CampCo will circulate the article via social media outlets (*e.g.*, Facebook, Twitter) to consumers of tritium watches.

2. The President of CampCo will send written notification to watch manufacturers and assemblers in China, and other international locations as identified by CampCo.

a. Within 6 months, the President of CampCo will submit a draft of the notification to NRC for review and approval, and will submit to NRC a list of proposed recipients.

b. The notification will summarize the violations issued to CampCo, the existence of NRC requirements for watches containing tritium, the existence of an Agreement State program, and the importance of compliance with NRC and Agreement State requirements.

c. Within 15 calendar days of receipt, NRC will approve or provide comments on the notification to CampCo.

d. CampCo will incorporate any NRC comments.

e. For further iterations, CampCo will provide updated versions and NRC will provide comments or approval within 15 calendar days of receipt.

f. Within 15 calendar days of NRC approval, CampCo will send written notification to watch manufacturers and assemblers in China, and other international locations as identified by CampCo.

3. The President of CampCo will submit an article for industry publication.

a. Within 1 year, the President of CampCo will submit a draft of the article to NRC for review and approval, and will submit to NRC a list of proposed recipients.

b. The article will summarize the existence of NRC and Agreement State requirements for watches containing tritium and emphasize the importance of compliance with NRC and Agreement State requirements.

c. Within 15 calendar days of receipt, NRC will approve or provide comments on the article to CampCo.

d. CampCo will incorporate any NRC comments.

e. For further iterations, CampCo will provide updated versions and NRC will provide comments or approval within 15 calendar days of receipt.

f. Within 15 calendar days of NRC approval, CampCo will submit an article for industry publication.

Training

4. Within 60 calendar days, the President of CampCo will hold meetings with key employees to outline the NRC requirements, and to emphasize and reinforce NRC and Agreement State compliance expectations.

a. Key employees will include those employees who are responsible for the sale and distribution of tritium watches and compliance with the requirements (*e.g.*, management, purchasing, sales and marketing, and logistics).

b. CampCo will maintain written documentation of attendance demonstrating that each key employee has attended.

5. Within 60 calendar days, the President of CampCo will hold meetings company-wide regarding general awareness of requirements and reinforcing NRC and Agreement State compliance expectations. CampCo will maintain written documentation of attendance, demonstrating that all employees have attended a meeting.

6. CampCo will engage a third party independent consultant to provide initial training to key employees on NRC compliance responsibilities for exempt distribution licenses, as well as the specific requirements and obligations associated with CampCo's NRC license.

a. Key employees will include those employees who are responsible for the sale and distribution of tritium watches and compliance with the requirements (*e.g.*, management, purchasing, sales and marketing, and logistics).

b. Within 9 months, CampCo will submit a draft of the training content to NRC for review and approval.

c. The training will address NRC compliance responsibilities for exempt distribution licenses per the regulations, the specific requirements and obligations associated with CampCo's NRC license, importance of compliance with NRC and Agreement State requirements, and any applicable CampCo procedures.

d. Within 30 calendar days of receipt, NRC will approve or provide comments on the draft of the training content related to NRC licensed activities to CampCo.

e. CampCo will incorporate any NRC comments.

f. For further iterations, CampCo will provide updated versions and NRC will provide comments or approval within 15 calendar days of receipt.

g. Within 90 calendar days of NRC approval, CampCo will complete the training for key employees.

h. CampCo will maintain written documentation of attendance demonstrating that each key employee has received training.

7. CampCo will provide annual refresher training for key employees on

NRC compliance responsibilities for exempt distribution licenses, as well as the specific requirements and obligations associated with CampCo's NRC license.

a. This training will be based on the initial training provided by the consultant, and will incorporate any changes in the regulations and/or license that occur after approval of the initial training.

b. This may be accomplished as a read-and-sign.

c. CampCo will maintain written documentation of completion.

8. CampCo will provide initial training for new key employees on NRC compliance responsibilities for exempt distribution licenses, as well as the specific requirements and obligations associated with CampCo's NRC license.

a. This training will be based on the initial training provided by the consultant, and will incorporate any changes in the regulations and/or license that occur after approval of the initial training.

b. This may be accomplished as a read-and-sign.

c. CampCo will maintain written documentation of completion.

Work Processes

9. Within 6 months, CampCo will engage an independent third party consultant to review CampCo processes, provide a written assessment and make any written recommendations for maintaining and improving compliance.

10. CampCo will engage an independent third-party consultant to conduct annual compliance audits prior to the submittal of the required annual reports for the 2017 and 2018 calendar years.

11. Within 9 months, CampCo will develop written procedures and/or checklists identifying NRC compliance responsibilities for exempt distribution licenses per the regulations, as well as the specific requirements and obligations associated with CampCo's NRC license. These written procedures and/or checklists will include, but not be limited to, the process to be followed should there be a change in sources or watches to be distributed by CampCo, as well as the timing and content of annual reports.

12. Within 9 months, CampCo will specify in Purchase Orders NRC and Agreement State requirements and mandate that suppliers provide necessary information required to meet CampCo's license conditions in a timely manner, including the manufacturer(s) and model number(s) of the source(s) in the watches.

Corrective Actions

13. Within 90 calendar days, CampCo will provide updated annual reports to NRC for calendar years 2010 through 2014, using the updated annual report for calendar year 2015, submitted on February 4, 2016, as the template.

General

14. The finding of willfulness in this case was not based on a finding that CampCo deliberately intended to violate NRC requirements, but rather on CampCo's careless disregard in failing to pursue necessary actions to ensure CampCo's compliance.

15. The NRC agrees not to pursue any further enforcement action in connection with the NRC's December 10, 2015, letter to CampCo.

16. The Confirmatory Order will constitute escalated enforcement action.

17. In the event of the transfer of the possession and/or distribution licenses of CampCo, Inc. to another entity, the terms and conditions set forth hereunder shall continue to apply to the new entity and accordingly survive any transfer of ownership or license.

18. Unless otherwise specified, all dates are from the date of issuance of the Confirmatory Order.

19. In consideration of the commitments delineated above, the NRC agrees to refrain from imposing a civil penalty.

20. Unless otherwise specified, all documents required to be submitted to the NRC will be sent to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, with copies to the Director Material Safety, State, Tribal, and Rulemaking Programs (MSTR), Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738, and to the Branch Chief Materials Safety Licensing Branch, MSTR, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738. CampCo will also endeavor to provide courtesy electronic copies to the above individuals.

On June 6, 2016, CampCo consented to issuing this Confirmatory Order with the commitments, as described in Section V below. CampCo further agreed that this Confirmatory Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that it has waived its right to a hearing.

IV

I find that the CampCo actions completed, as described in Section III above, combined with the commitments as set forth in Section V are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that CampCo's commitments be confirmed by this Confirmatory Order. Based on the above and CampCo's consent, this Confirmatory Order is effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, THAT LICENSE NO. 04–23910–01E IS MODIFIED AS FOLLOWS:

Communications

1. The President of CampCo will submit an article via social media outlets (*e.g.,* Facebook, Twitter) to consumers of tritium watches.

a. Within 6 months, the President of CampCo will submit a draft of the article to NRC for review and approval.

b. The article will summarize the existence of NRC and Agreement State requirements for watches containing tritium, emphasize the importance of compliance with NRC and Agreement State requirements, and raise awareness of a potential consumer safety hazard for non-compliant watches.

c. Within 15 calendar days of receipt, NRC will approve or provide comments to CampCo.

d. CampCo will incorporate any NRC comments.

e. CampCo will provide updated versions of the article to NRC for review and approval prior to CampCo submittal for publication.

f. Within 15 calendar days of NRC approval, CampCo will circulate the article via social media outlets (*e.g.,* Facebook, Twitter) to consumers of tritium watches.

2. The President of CampCo will send written notification to watch manufacturers and assemblers in China, and other international locations as identified by CampCo.

a. Within 6 months, the President of CampCo will submit a draft of the notification to NRC for review and approval, and will submit to NRC a list of proposed recipients.

b. The notification will summarize the violations issued to CampCo, the existence of NRC requirements for watches containing tritium, the existence of an Agreement State program, and the importance of compliance with NRC and Agreement State requirements.

c. CampCo will incorporate any NRC comments.

d. CampCo will provide updated versions of the article to NRC for review and approval prior to CampCo submittal for publication.

e. Within 15 calendar days of NRC approval, CampCo will send written notification to watch manufacturers and assemblers in China, and other international locations as identified by CampCo.

3. The President of CampCo will submit an article for industry publication.

a. Within 1 year, the President of CampCo will submit a draft of the article to NRC for review and approval, and will submit to NRC a list of proposed recipients.

b. The article will summarize the existence of NRC and Agreement State requirements for watches containing tritium and emphasize the importance of compliance with NRC and Agreement State requirements.

c. CampCo will incorporate any NRC comments.

d. CampCo will provide updated versions and NRC will provide comments or approval within 15 calendar days of receipt.

e. Within 15 calendar days of NRC approval, CampCo will submit an article for industry publication.

Training

4. Within 60 calendar days, the President of CampCo will hold meetings with key employees to outline the NRC requirements, and to emphasize and reinforce NRC and Agreement State compliance expectations.

a. Key employees will include those employees who are responsible for the sale and distribution of tritium watches and compliance with the requirements (*e.g.*, management, purchasing, sales and marketing, and logistics).

b. CampCo will maintain written documentation of attendance demonstrating that each key employee has attended.

5. Within 60 calendar days, the President of CampCo will hold meetings company-wide regarding general awareness of requirements and reinforcing NRC and Agreement State compliance expectations. CampCo will maintain written documentation of attendance, demonstrating that all employees have attended a meeting.

6. CampCo will engage a third party independent consultant to provide initial training to key employees on NRC compliance responsibilities for exempt distribution licenses, as well as the specific requirements and obligations associated with CampCo's NRC license.

a. Key employees will include those employees who are responsible for the sale and distribution of tritium watches and compliance with the requirements (*e.g.*, management, purchasing, sales and marketing, and logistics).

b. Within 9 months, CampCo will submit a draft of the training content to NRC for review and approval.

c. The training will address NRC compliance responsibilities for exempt distribution licenses per the regulations, the specific requirements and obligations associated with CampCo's NRC license, importance of compliance with NRC and Agreement State requirements, and any applicable CampCo procedures.

d. CampCo will incorporate any NRC comments.

e. CampCo will provide updated versions and NRC will provide comments or approval within 15 calendar days of receipt.

f. Within 90 calendar days of NRC approval, CampCo will complete the training for key employees.

g. CampCo will maintain written documentation of attendance demonstrating that each key employee has received training.

7. CampCo will provide annual refresher training for key employees on NRC compliance responsibilities for exempt distribution licenses, as well as the specific requirements and obligations associated with CampCo's NRC license.

a. This training will be based on the initial training provided by the consultant, and will incorporate any changes in the regulations and/or license that occur after approval of the initial training.

b. This may be accomplished as a read-and-sign training document.

c. CampCo will maintain written documentation of completion.

8. CampCo will provide initial training for new key employees on NRC compliance responsibilities for exempt distribution licenses, as well as the specific requirements and obligations associated with CampCo's NRC license.

a. This training will be based on the initial training provided by the consultant, and will incorporate any changes in the regulations and/or license that occur after approval of the initial training.

b. This may be accomplished as a read-and-sign training document.

c. CampCo will maintain written documentation of completion.

Work Processes

9. Within 6 months, CampCo will engage an independent third party consultant to review CampCo processes, provide a written assessment and make any written recommendations for maintaining and improving compliance.

10. CampCo will engage an independent third-party consultant to conduct annual compliance audits prior to the submittal of the required annual reports for the 2017 and 2018 calendar years.

11. Within 9 months, CampCo will develop written procedures and/or checklists identifying NRC compliance responsibilities for exempt distribution licenses per the regulations, as well as the specific requirements and obligations associated with CampCo's NRC license. These written procedures and/or checklists will include, but not be limited to, the process to be followed should there be a change in sources or watches to be distributed by CampCo, as well as the timing and content of annual reports.

12. Within 9 months, CampCo will specify in Purchase Orders NRC and Agreement State requirements and mandate that suppliers provide necessary information required to meet CampCo's license conditions in a timely manner, including the manufacturer(s) and model number(s) of the source(s) in the watches.

Corrective Actions

13. Within 90 calendar days, CampCo will provide updated annual reports to NRC for calendar years 2010 through 2014, using the calendar year 2015 updated annual report as provided to the NRC on February 4, 2015, as the template for content and format of the reports. Future annual reports will use the 2015 annual report as template, with adjustments to this template as needed to comply with any future changes to NRC requirements.

In the event of the transfer of the possession and/or distribution licenses of CampCo, Inc. to another entity, the terms and conditions set forth hereunder shall continue to apply to the new entity and accordingly survive any transfer of ownership or license.

Unless otherwise specified, all dates are from the date of issuance of the Confirmatory Order.

Unless otherwise specified, all documents required to be submitted to the NRC will be sent to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, with copies to the Director Material Safety, State, Tribal, and

Rulemaking Programs (MSTR), Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738, and to the Branch Chief Materials Safety Licensing Branch, MSTR, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738. CampCo will also endeavor to provide courtesy electronic copies to the above individuals.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by CampCo or its successors of good cause.

VI

In accordance with 10 CFR 2.202 and 2.309, any person adversely affected by this Confirmatory Order, other than CampCo, may request a hearing within 30 days of the issuance date of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, NRC, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended by 77 FR 46562; August 3, 2012), codified in pertinent part at 10 CFR part 2, subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE) System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the EIE System. Submissions should be in Portable Document Format in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8:00 a.m. and 8:00 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must, in accordance with 10 CFR 2.302(g), file an exemption request with their initial paper filing showing good cause as to why they cannot file electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 16th Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://edh1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than CampCo requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue a separate Order designating the time and place of any hearings, as appropriate. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days after issuance of the Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 20th day of June, 2016.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Office of Enforcement.

cc: State of California

[FR Doc. 2016–15143 Filed 6–24–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456, STN 50–457, STN 50–454 and STN 50–455; NRC–2016–0124]

Exelon Generation Company, LLC; Braidwood Station, Units 1 and 2, and Byron Station, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a February 23, 2016, request from Exelon Generation Company, LLC, requesting an exemption to allow use of a different fuel rod cladding material (Optimized ZIRLO™).

ADDRESSES: Please refer to Docket ID NRC–2016–0124 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0124. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Joel S. Wiebe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6606, email: *Joel.Wiebe@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Exelon Generation Company, LLC (Exelon or the licensee) is the holder of renewed Facility Operating License Nos. STN 50–456, STN 50–457, STN 50–454 and STN 50–455, which authorize operation of the Braidwood Station (Braidwood), Units 1 and 2, and the Byron Station (Byron) Unit Nos. 1 and 2, respectively. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

The Braidwood facility consists of two pressurized-water reactors located in Will County in Illinois and the Byron facility consists of two pressurized-water reactors located in Ogle County in Illinois.

II. Request/Action

Pursuant to section 50.12 of title 10 of the *Code of Federal Regulations* (10 CFR), "Specific exemptions," the licensee has, by letter dated February 23, 2016 (ADAMS Accession No. ML16055A149), requested an exemption from 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors," and 10 CFR part 50, appendix K, "ECCS Evaluation Models," to allow the use of fuel rod cladding with Optimized ZIRLO™ alloy for future reload applications. The regulations in 10 CFR 50.46 contain acceptance criteria for the ECCS for reactors fueled with zircaloy or ZIRLO™ fuel rod cladding material. In addition, paragraph I.A.5 of appendix K to 10 CFR part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal/water reaction. The Baker-Just equation assumes the use of a zirconium alloy, which is a material different from Optimized ZIRLO™. Thus, the strict application of these regulations does not permit the use of fuel rod cladding material other than zircaloy or ZIRLO™. Because the material specifications of Optimized ZIRLO™ differ from the specifications for zircaloy or ZIRLO™, and the regulations specify a cladding material other than Optimized ZIRLO™, a plant-specific exemption is required to allow the use of, and application of these regulations to, Optimized ZIRLO™ at Braidwood and Byron Stations.

The exemption request relates solely to the cladding material specified in these regulations (*i.e.,* fuel rods with zircaloy or ZIRLO™ cladding material). This exemption would allow application of the acceptance criteria of 10 CFR 50.46 and 10 CFR part 50, appendix K, to fuel assembly designs using Optimized ZIRLO™ fuel rod cladding material. In its letter dated February 23, 2016, the licensee indicated that it was not seeking an exemption from the acceptance and analytical criteria of these regulations. The intent of the request is to allow the use of the criteria set forth in these regulations for the use of Optimized ZIRLO™ fuel rod cladding material at Braidwood and Byron Stations.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and appendix K to 10 CFR part 50 is to establish acceptance criteria for ECCS performance to provide reasonable assurance of safety in the event of a loss-of-coolant accident (LOCA). Although the regulations in 10 CFR 50.46 and appendix K are not expressly applicable to Optimized ZIRLO™, the evaluations described in the following sections of this exemption show that the purpose of the regulations are met by this exemption in that, subject to certain conditions, the acceptance criteria are valid for Optimized ZIRLO™ fuel cladding material, Optimized ZIRLO™ would maintain better post-quench ductility, and the Baker-Just correlation conservatively bounds LOCA scenario metal-water reaction rates and is applicable to Optimized ZIRLO™. Thus, a strict application of the rule (which would preclude the applicability of ECCS performance acceptance criteria to, and the use of, Optimized ZIRLO™ fuel cladding material) is not necessary to achieve the underlying purposes of 10 CFR 50.46 and appendix K to 10 CFR part 50. The purpose of these regulations is achieved through application of the specific requirements to use the Optimized ZIRLO™ fuel rod cladding material. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption exist.

Authorized by Law

This exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material for future reload operations at Braidwood and Byron Stations. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50 provided that special circumstances are present. As described above, the NRC staff has determined that special circumstances exist to grant the requested exemption. In addition, granting the exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

Section 10 CFR 50.46 requires that each boiling or pressurized light-water nuclear power reactor fueled with uranium dioxide pellets within cylindrical zircaloy or ZIRLO™ cladding must be provided with an ECCS that must be designed so that its calculated cooling performance following a postulated LOCA conforms to the criteria set forth in paragraph (b) of section 10 CFR 50.46. The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for adequate ECCS performance. As previously documented in the NRC staff's safety evaluation dated June 10, 2005 (ADAMS Accession No. ML051670395), of topical reports submitted by Westinghouse Electric Company, LLC (Westinghouse), and subject to compliance with the specific conditions of approval established therein, the NRC staff found that Westinghouse demonstrated the applicability of these ECCS acceptance criteria to Optimized ZIRLO™. Ring compression tests performed by Westinghouse on Optimized ZIRLO™ (see WCAP–14342–A & CENPD–404–NP–A at ADAMS Accession No. ML062080569) demonstrate an acceptable retention of post-quench ductility up to 10 CFR 50.46 limits of 2,200 degrees Fahrenheit and 17 percent equivalent clad reacted. Furthermore, the NRC staff has concluded that oxidation measurements provided by the licensee in letter LTR–NRC–07–58 from Westinghouse to the NRC, "SER Compliance with WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, 'Optimized ZIRLO™,'" dated November 6, 2007 (public version located at ADAMS Accession No. ML073130560), illustrate that oxide thickness and associated hydrogen pickup for Optimized ZIRLO™ at any given burnup would be less than both zircaloy-4 and ZIRLO™. Hence, the NRC staff concludes that Optimized ZIRLO™ would be expected to maintain better post-quench ductility than ZIRLO™. This finding is further supported by an ongoing LOCA research program at Argonne National Laboratory, which has identified a strong correlation between cladding hydrogen content (caused by in-service corrosion) and postquench ductility.

Westinghouse, in letters dated January 4, 2007 (ADAMS Accession Nos. ML070100385 and ML070100388), November 6, 2007 (ADAMS Accession Nos. ML073130556 and ML073130560), December 30, 2008 (ADAMS Accession Nos. ML080390451 and ML080390452), February 5, 2009 (ADAMS Accession Nos. ML090080380 and ML090080381), July 26, 2010 (ADAMS Accession Nos. ML102140213 and ML102140214), February 25, 2013 (ADAMS Accession Nos. ML13070A188 and ML13070A189), and February 9, 2015 (ADAMS Accession Nos. ML15051A427 and ML15051A429), provided information that confirmed the models' applicability for burnups up to 62 GWD/MTU for Westinghouse fuels.

In addition, the provisions of 10 CFR 50.46 require the licensee to periodically evaluate the performance of the ECCS, using currently approved LOCA models and methods, to ensure that the fuel rods will continue to satisfy 10 CFR 50.46 acceptance criteria. In its letter dated February 23, 2016, the licensee stated that it will evaluate fuel assemblies using Optimized ZIRLO™ fuel rod cladding material using NRC-approved methods and models to address the use of Optimized ZIRLO™ fuel rod cladding. The NRC staff concludes that granting the exemption to allow the licensee to use Optimized ZIRLO™ fuel rod cladding material and apply 10 CFR 50.46 criteria would not diminish this requirement of periodic evaluation of ECCS performance. Thus, the underlying purpose of the rule to maintain post-quench ductility in the fuel cladding material through ECCS performance criteria will continue to be achieved for Braidwood and Byron Stations.

Paragraph I.A.5 of Appendix K to 10 CFR part 50 states that the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of this provision of the rule would not permit use of the equation for Optimized ZIRLO™ fuel rod cladding material for determining acceptable fuel performance. The underlying purpose of this regulation, however, is to ensure that analyses of fuel response to LOCAs are conservatively calculated. In its evaluation of the approved topical reports, the NRC staff previously found that metal-water reaction tests performed by Westinghouse on Optimized ZIRLO™ (see Appendix B of WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A) demonstrate conservative reaction rates relative to the Baker-Just equation, and that the Baker-Just equation conservatively bounds post-LOCA scenarios of, and applicable to, Optimized ZIRLO™ fuel rod cladding. Thus, the NRC staff determined that the strict application of Appendix K, Paragraph I.A.5 (which would preclude its applicability to, and the use of, Optimized ZIRLO™) is not necessary to achieve the underlying purpose of the rule in these circumstances. Since these evaluations demonstrate that the underlying purpose of the rule will be met, there will be no undue risk to the public health and safety.

Consistent With the Common Defense and Security

The licensee's exemption request is to allow the application of an improved fuel rod cladding material to the regulations in 10 CFR 50.46 and paragraph I.A.5 of appendix K to 10 CFR part 50. In its letter dated February 23, 2016, the licensee stated that all the requirements and acceptance criteria will be maintained. The licensee is required to handle and control special nuclear material in these assemblies in accordance with its approved procedures. This change to reactor core internals is adequately controlled by NRC requirements and is not related to security issues. Therefore, the NRC staff determined that this exemption does not impact, and thus is consistent with, the common defense and security.

Environmental Considerations

The NRC staff determined that the exemption discussed herein meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9) because it is related to a requirement concerning the installation or use of a facility component located within the restricted area, as defined in 10 CFR part 20, and issuance of this exemption involves: (i) No significant hazards consideration, (ii) no significant change in the types or a significant increase in the amounts of any effluents that may be released offsite, and (iii) no significant increase in individual or cumulative occupational radiation exposure. Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's consideration of this exemption request. The basis for the NRC staff's determination is discussed as follows with an evaluation against each of the requirements in 10 CFR 51.22(c)(9)(i) through (iii).

Requirements in 10 CFR 51.22(c)(9)(i)

The NRC staff evaluated whether the exemption involves no significant hazards consideration using the standards described in 10 CFR 50.92(c), as presented below:

1. Does the proposed exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material in the reactors. The NRC approved topical report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A "Optimized ZIRLO™," prepared by Westinghouse, addresses Optimized ZIRLO™ and demonstrates that Optimized ZIRLO™ has essentially the same properties as currently licensed ZIRLO®. The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO™ fuel cladding material will continue to meet all 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed exemption does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The use of Optimized ZIRLO™ fuel rod cladding material will not result in changes in the operation or configuration of the facility. Topical Reports WCAP–12610–P–A and CENPD–404–PA demonstrated that the material properties of Optimized ZIRLO™ are similar to those of standard ZIRLO®. Therefore, Optimized ZIRLO™ fuel rod cladding material will perform similarly to those fabricated from standard ZIRLO®, thus precluding the possibility of the fuel cladding becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed exemption does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed exemption involve a significant reduction in a margin of safety?

Response: No.

The proposed exemption will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the Optimized ZIRLO™ are not significantly different from those of standard ZIRLO®. Optimized ZIRLO™ is expected to perform similarly to standard ZIRLO® for all normal operating and accident scenarios, including both LOCA and non-LOCA scenarios. For LOCA scenarios, where the slight difference in Optimized ZIRLO™ material properties relative to standard ZIRLO® could have some impact on the overall accident scenario, plant-specific LOCA analyses using Optimized ZIRLO™ properties will demonstrate that the acceptance criteria of 10 CFR 50.46 have been satisfied.

Therefore, the proposed exemption does not involve a significant reduction in a margin of safety.

Based on the above evaluation of the standards set forth in 10 CFR 50.92(c), the NRC staff concludes that the proposed exemption involves no significant hazards consideration. Accordingly, the requirements of 10 CFR 51.22(c)(9)(i) are met.

Requirements in 10 CFR 51.22(c)(9)(ii)

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material in the reactors. Optimized ZIRLO™ has essentially the same material properties and performance characteristics as the currently licensed ZIRLO® cladding. Thus, the use of Optimized ZIRLO™ fuel rod cladding material will not significantly change the types of effluents that may be released offsite, or significantly increase the amount of effluents that may be released offsite. Therefore, the requirements of 10 CFR 51.22(c)(9)(ii) are met.

Requirements in 10 CFR 51.22(c)(9)(iii)

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material in the reactors. Optimized ZIRLO™ has essentially the same material properties and performance characteristics as the currently licensed ZIRLO® cladding. Thus, the use of Optimized ZIRLO™ fuel rod cladding material will not significantly increase individual occupational radiation exposure, or significantly increase cumulative occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(9)(iii) are met.

Conclusion

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's proposed issuance of this exemption.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances pursuant to 10 CFR 50.12(a)(2)(ii) are present. Therefore, the Commission hereby grants Exelon an exemption from the requirements of 10 CFR 50.46 and appendix K to 10 CFR part 50, to allow the application of those criteria to, and the use of, Optimized ZIRLO™ fuel rod cladding material at the Braidwood Station, Units 1 and 2, and Byron Station Unit Nos. 1 and 2.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of June 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–15144 Filed 6–24–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Formation of SES Performance Review Board

AGENCY: U.S. Nuclear Waste Technical Review Board.

ACTION: Notice.

SUMMARY: Section 4314(c)(1) through (5) of title 5 of the United States Code, requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. Section 4314(c)(4) of title 5 requires that notice of appointment of board members be published in the **Federal Register**. The following executives have been designated as members of the Performance Review Board for the U.S. Nuclear Waste Technical Review Board:

Jean M. Bahr, Board Member, U.S. Nuclear Waste Technical Review Board
Linda K. Nozick, Board Member, U.S. Nuclear Waste Technical Review Board
Paul J. Turinsky, Board Member, U.S. Nuclear Waste Technical Review Board
Timothy J. Dwyer, Group Lead, Nuclear Weapons Program, Defense Nuclear Facilities Safety Board
Richard E. Tontodonato, Deputy Technical Director, Defense Nuclear Facilities Safety Board
Mark T. Welch, General Manager, Defense Nuclear Facilities Safety Board

DATES: Effectively immediately and until December 31, 2016.

FOR FURTHER INFORMATION CONTACT: For further information about the formation of the U.S. Nuclear Waste Technical Review Board's Performance Review Board, please contact Debra L. Dickson at 703.235.4480, or via email at *dickson@nwtrb.gov,* or via mail at 2300 Clarendon Blvd., Suite 1300, Arlington, VA 22201.

Authority: 42 U.S.C. 10262

June 20, 2016.

Debra L. Dickson,

Director of Administration, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2016–15137 Filed 6–24–16; 8:45 am]

BILLING CODE P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: OPM.GOV Feedback Tab Survey

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a new information collection request (ICR) 3206–NEW, the OPM.GOV Feedback tab survey. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until August 26, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, 1900 E Street NW., Room 3316, Washington, DC 20415, Attention: Strategic Goal 2 Team or sent via email to *customerexperience@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, 1900 E Street NW., Room 3316, Washington, DC 20415, Attention: Strategic Goal 2 Team or sent via email to *customerexperience@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Overview: This survey that will be accessed through a feedback tab that will appear on each subpage of the *opm.gov* Web site. OPM has enhanced its focus on customer service by making it a goal in the FY 2014–2018 Strategic Plan (Goal 2). OPM is also part of the Customer Service Cross-Agency Priority Goal Community of Practice. This survey will provide the agency with relevant information, particularly in support of performance measures for Strategic Goal 2.

Analysis

Agency: Office of Personnel Management.

Title: OPM.GOV Feedback Tab Survey.

OMB Number: OMB Control No. 3260–NEW.

Frequency: Continuous access to the survey link.

Affected Public: Individuals who visit *OPM.GOV.*

Number of Respondents: Unknown at this time, as survey will be administered via "open participation." No firm sample size exists; however, target completion is between 30,000 and 60,000 unique responses over the span of a year.

Estimated Time per Respondent: 7–10 minutes.

Total Burden Hours: Dependent on final participation numbers.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–15034 Filed 6–24–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0140, Representative Payee Application (RI 20–7) and Information Necessary for a Competency Determination (RI 30–3)

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0140, Representative Payee Application (RI 20–7) and Information Necessary for a Competency Determination (RI 30–3). As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on September 9, 2015 (Volume 80, No. 174, Page 54328) allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 27, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

RI 20–7, Representative Payee Application, is used by the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30–3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Representative Payee Application and Information Necessary for a Competency Determination.

OMB Number: 3206–0140.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: RI 20–7 = 12,480; RI 30–3 = 250.

Estimated Time Per Respondent: 90.

Total Burden Hours: 6,490.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–15037 Filed 6–24–16; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2016–223; CP2016–224; CP2016–225]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 28, 2016. (Comment due date applies to all Docket Nos. listed above).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–223; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 20, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Cassie D'Souza; *Comments Due:* June 28, 2016.

2. *Docket No(s).:* CP2016–224; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 20, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 28, 2016.

3. *Docket No(s).:* CP2016–225; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 20, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Cassie D'Souza; *Comments Due:* June 28, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–15042 Filed 6–24–16; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information on Artificial Intelligence

ACTION: Notice of Request for Information.

SUMMARY: Artificial intelligence (AI) technologies offer great promise for creating new and innovative products, growing the economy, and advancing national priorities in areas such as education, mental and physical health, addressing climate change, and more. Like any transformative technology, however, AI carries risks and presents complex policy challenges along a number of different fronts. The Office of Science and Technology Policy (OSTP) is interested in developing a view of AI across all sectors for the purpose of recommending directions for research and determining challenges and opportunities in this field. The views of the American people, including stakeholders such as consumers, academic and industry researchers, private companies, and charitable foundations, are important to inform an understanding of current and future needs for AI in diverse fields. The purpose of this RFI is to solicit feedback on overarching questions in AI, including AI research and the tools, technologies, and training that are needed to answer these questions.

DATES: Responses must be received by July 22, 2016 to be considered.

ADDRESSES: You may submit comments by any of the following methods:

- *Webform: https://www.whitehouse.gov/webform/rfi-preparing-future-artificial-intelligence*
- *Fax:* (202) 456–6040, Attn: Terah Lyons.
- *Mail:* Attn: Terah Lyons, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave. NW., Washington, DC 20504. Please allow sufficient time for mail security processing. Comments must be received by July 22, 2016, to be considered.

Instructions: Response to this RFI is voluntary. Responses exceeding 2,000 words will not be considered. Respondents need not reply to all questions; however, they should clearly indicate the number of each question to which they are responding. Brevity is appreciated. Responses to this RFI may be posted without change online. OSTP therefore requests that no business proprietary information or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

SUPPLEMENTARY INFORMATION: On May 3, 2016, the White House Office of Science and Technology Policy announced a number of new actions related to AI: *https://www.whitehouse.gov/blog/2016/05/03/preparing-future-artificial-intelligence.* As a part of this initiative, the Federal Government is working to leverage AI for public good and to aid in promoting more effective government. OSTP is in the process of co-hosting four public workshops in 2016 on topics in AI in order to spur public dialogue on these topics and to identify challenges and opportunities related to this emerging technology. These topics include the legal and governance issues for AI, AI for public good, safety and control for AI, and the social and economic implications of AI. A new National Science and Technology Council (NSTC) Subcommittee on Machine Learning and Artificial Intelligence has also been established. This group will monitor state-of-the-art advances and technology milestones in artificial intelligence and machine learning within the Federal Government, in the private sector, and internationally, as well as help coordinate Federal activity in this space. Ultimately, dialogue from these workshops and the efforts of the NSTC Subcommittee may feed into the development of a public report.

The Administration is working to leverage AI as an emergent technology for public good and toward a more effective government. Applications in AI to areas of government that are not traditionally technology-focused are especially significant; there are myriad opportunities to improve government services in areas related to urban systems and smart cities, mental and physical health, social welfare, criminal justice, and the environment. There is also tremendous potential in AI-driven improvements to programs that help disadvantaged and vulnerable populations.

OSTP is particularly interested in responses related to the following topics: (1) The legal and governance implications of AI; (2) the use of AI for public good; (3) the safety and control issues for AI; (4) the social and economic implications of AI; (5) the most pressing, fundamental questions in AI research, common to most or all scientific fields; (6) the most important research gaps in AI that must be addressed to advance this field and benefit the public; (7) the scientific and technical training that will be needed to take advantage of harnessing the potential of AI technology, and the challenges faced by institutions of higher education in retaining faculty and responding to explosive growth in student enrollment in AI-related courses and courses of study; (8) the specific steps that could be taken by the federal government, research institutes, universities, and philanthropies to encourage multi-disciplinary AI research; (9) specific training data sets that can accelerate the development of AI and its application; (10) the role that "market shaping" approaches such as incentive prizes and Advanced Market Commitments can play in accelerating the development of applications of AI to address societal needs, such as accelerated training for low and moderate income workers (see *https://www.usaid.gov/cii/market-shaping-primer*); and (11) any additional information related to AI research or policymaking, not requested above, that you believe OSTP should consider.

FOR FURTHER INFORMATION CONTACT: Terah Lyons, (202) 456–4444, *Tech_Innovation@ostp.eop.gov,* OSTP.

Ted Wackler,
Deputy Chief of Staff.

[FR Doc. 2016–15082 Filed 6–24–16; 8:45 am]

BILLING CODE 3270–F5–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78119; File Nos. SR–ISE–2016–11; SR–ISE Gemini–2016–05; SR–ISE Mercury–2016–10]

Self-Regulatory Organizations; International Securities Exchange, LLC; ISE Gemini, LLC; ISE Mercury, LLC; Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment No. 1 Thereto, Relating to a Corporate Transaction in Which Nasdaq, Inc. Will Become the Indirect Parent of ISE, ISE Gemini, and ISE Mercury

June 21, 2016.

I. Introduction

On April 28, 2016, the International Securities Exchange, LLC ("ISE"), ISE Gemini, LLC ("ISE Gemini"), and ISE Mercury, LLC ("ISE Mercury") (collectively, the "Exchanges") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] proposed rule changes in connection with the acquisition of the Exchanges' indirect parent company, U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings") by Nasdaq, Inc. ("Nasdaq"). The proposed rule changes were published for comment in the **Federal Register** on May 16, 2016.[3] On June 10, 2016, the Exchanges each filed Amendment No. 1 to their respective proposed rule changes.[4] The Commission received no comment letters on the proposed rule changes. This order provides notice of filing of Amendment No. 1 to each of the proposed rule changes and grants accelerated approval to the proposed rule changes, each as modified by Amendment No. 1.

II. Background

Currently, the Exchanges are wholly owned subsidiaries of International Securities Exchange Holdings, Inc. ("ISE Holdings"). ISE Holdings, in turn, is a wholly owned subsidiary of U.S. Exchange Holdings, which is wholly owned together by Deutsche Börse AG ("Deutsche Börse") and Eurex Frankfurt AG ("Eurex Frankfurt").[5] On March 9, 2016, Deutsche Börse and Eurex Frankfurt entered into an agreement with Nasdaq, pursuant to which Nasdaq would acquire all of the capital stock of U.S. Exchange Holdings (the "Transaction") and thereby indirectly all of the interests of the Exchanges.[6] Nasdaq currently owns and operates three national securities exchanges, The NASDAQ Stock Market LLC ("NASDAQ Exchange"), NASDAQ PHLX LLC ("PHLX"), and NASDAQ BX, Inc. ("BX").

Following the closing of the Transaction, Deutsche Börse and Eurex Frankfurt will cease to be upstream owners of the Exchanges.[7] The Exchanges will become indirect subsidiaries of Nasdaq, and Nasdaq will become the ultimate parent company of the Exchanges.[8] The remaining upstream owners of the Exchanges, however, will remain the same. Namely, U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings, which, in turn, will continue to remain the sole, direct owner of the Exchanges.

In order to consummate the Transaction and reflect Nasdaq's proposed ownership of U.S. Exchange Holdings, the Exchanges propose, upon closing of the Transaction, to eliminate certain corporate resolutions of Deutsche Börse and Eurex Frankfurt that were previously filed with the Commission as rules of the Exchanges and adopt Nasdaq's Amended and Restated Certificate of Incorporation ("Nasdaq COI") and Bylaws ("Nasdaq Bylaws", and together with the Nasdaq COI, the "Nasdaq governing documents") as rules of the Exchanges.[9] The Exchanges also propose to amend certain provisions regarding ownership limits and voting limits of the Second Amended and Restated Certificate of Incorporation of ISE Holdings ("ISE Holdings COI") and to amend the Third Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings ("U.S. Exchange Holdings COI") to reflect that Nasdaq will hold all, and have the rights to vote all, authorized shares of stock of U.S. Exchange Holdings.[10] Additionally, the Exchanges propose to eliminate the Third Amended and Restated Trust Agreement (the "Trust Agreement") that exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein), which was previously established as rules of the Exchanges, and delete related references to the Trust Agreement in the ISE Holdings COI and U.S. Exchange Holdings COI.[11] Finally, the Exchanges propose, as described below, to amend each of their existing rules limiting the affiliation between ISE, ISE Gemini, or ISE Mercury and their respective members.[12]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 77794 (May 10, 2016), 81 FR 30351 ("ISE Notice"); 77795 (May 10, 2016), 81 FR 30386 (May 16, 2016) ("ISE Gemini Notice"); and 77796 (May 10, 2016), 81 FR 30403 (May 16, 2016) ("ISE Mercury Notice").

[4] *See infra* Section V (discussing the changes proposed in Amendment No. 1). Amendment No. 1 has been placed in the public comment file for SR–ISE–2016–11, SR–ISE Gemini–2016–05, and ISE Mercury–2016–10 at *https://www.sec.gov/comments/sr-ise-2016-11/ise201611-1.pdf, https://www.sec.gov/comments/sr-isegemini-2016-05/isegemini201605.shtml,* and *https://www.sec.gov/comments/sr-isemercury-2016-10/isemercury201610.shtml* (*see* letters from Michael Simon, Secretary, General Counsel, and Chief Regulatory Officer, ISE, ISE Gemini, and ISE Mercury, to Brent J. Fields, Secretary, Commission, dated June 13, 2016).

[5] Eurex Frankfurt holds an 85% interest in U.S. Exchange Holdings, and Deutsche Börse holds the remaining 15%. In turn, Deutsche Börse holds a 100% interest in Eurex Frankfurt. *See* ISE Notice, *supra* note 3 at 30352.

[6] *See* ISE Notice, *supra* note 3 at 30352; ISE Gemini Notice, *supra* note 3, at 30387; and ISE Mercury Notice, *supra* note 3, at 30404.

[7] *See* ISE Notice, *supra* note 3 at 30352; ISE Gemini Notice, *supra* note 3, at 30387; and ISE Mercury Notice, *supra* note 3, at 30404. Upon completion of the Transaction, the Exchanges will also cease to have any non-U.S. upstream owners. *See id.*

[8] The Exchanges will also become affiliates of NASDAQ Exchange, PHLX, NASDAQ BX, Inc. BX, Boston Stock Exchange Clearing Corporation ("BSECC"), and Stock Clearing Corporation of Philadelphia ("SCCP") through common, ultimate ownership by Nasdaq. *See* ISE Notice, *supra* note 3 at 30351; ISE Gemini Notice, *supra* note 3, at 30386; and ISE Mercury Notice, *supra* note 3, at 30403. Upon closing of the Transaction, Nasdaq will be the sole owner of eight self-regulatory organizations: ISE, ISE Gemini, ISE Mercury, NASDAQ Exchange, PHLX, BX, BSECC, and SCCP.

[9] *See infra* Section III.A (Non-U.S. Upstream Owner Resolutions and Nasdaq Governing Documents).

[10] *See infra* Section III.B (Ownership Limits and Voting Limits).

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission finds that the proposals are consistent with Section 6(b)(1) of the Act,[14] which requires that an exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. In addition, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Each of the Exchanges represents that it will continue to operate and conduct its regulated activities (including operating and regulating its market and members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction.[16] The Exchanges also state that they will continue to operate as separate self-regulatory organizations ("SROs") that are registered as national securities exchanges, with separate rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of other national securities exchanges owned by Nasdaq.[17] Further, as discussed in more detail below, the Commission believes that the proposed changes related to the Transaction will not impair the ability of the Commission or the Exchanges to discharge their respective responsibilities under the Act. Additionally, the Commission believes that the proposed rule changes will allow the Commission to continue to exercise its plenary regulatory authority over the Exchanges and continue to provide the Commission and the Exchanges with access to necessary information that will allow the Exchanges to comply, and enforce compliance, with the Act.[18]

A. Non-U.S. Upstream Owner Resolutions and Nasdaq Governing Documents

Section 19(b) of the Act,[19] and Rule 19b–4 thereunder,[20] require an SRO to file proposed rule changes with the Commission. Although Deutsche Börse and Eurex Frankfurt are not SROs, their activities with respect to the operation of the Exchanges are required to be consistent, and not interfere, with the self-regulatory obligations of the Exchanges under their control. Accordingly, when they became owners of the Exchanges, either through an acquisition or through new exchange registrations, Deutsche Börse and Eurex Frankfurt each adopted resolutions ("Non-U.S. Upstream Owner Resolutions"), which were previously filed with and approved by the Commission as rules of the Exchanges, to incorporate provisions regarding ownership, jurisdiction, books and records, and other matters related to their control of the Exchanges, as well as provisions regarding board members, officers, employees, and agents' involvement in the activities of the Exchanges.[21]

Following the close of the Transaction, however, Deutsche Börse and Eurex Frankfurt will both cease to be non-U.S. upstream owners of the Exchanges. Accordingly, the Exchanges propose to delete the Non-U.S. Upstream Owner Resolutions, such that, as of the closing date of the Transaction, they will no longer be rules of the Exchanges. The Commission finds the deletion to be consistent with the Act. The deletion of the Non-U.S. Upstream Owner Resolutions as rules of the Exchanges is necessary to reflect the change in the upstream ownership of the Exchanges after the consummation of the Transaction.

Following the closing of the Transaction, Nasdaq will replace Deutsche Börse and Eurex Frankfurt as the ultimate parent company of the Exchanges. Although Nasdaq will not carry out regulatory functions as an SRO, as with Deutsche Börse and Eurex Frankfurt, its activities with respect to the operation of the Exchanges must be consistent with, and not interfere with, the Exchanges' self-regulatory obligations. As a result, following the closing of the Transaction, certain provisions of the Nasdaq governing documents will become stated policies, practices, or interpretations of the Exchanges, and must therefore be filed as rules with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder.[22] Accordingly, the Exchanges propose that the Nasdaq governing documents become rules of the Exchanges as of the closing date of the Transaction.

The Nasdaq governing documents include certain provisions that are designed to maintain the independence of each of its self-regulatory subsidiaries'[23] self-regulatory functions, enable each of its self-regulatory subsidiaries to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Section 6(b) of the Act,[24] and facilitate the ability of each of its self-regulatory subsidiaries and the Commission to fulfill their regulatory and oversight obligations under the Act.[25] Upon closing of the Transaction, each of the Exchanges will be a self-regulatory subsidiary of Nasdaq. Accordingly, the provisions regarding the self-regulatory subsidiaries in the Nasdaq governing documents will apply to the Exchanges when the Transaction is finalized.

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[11] *See infra* Section III.C (Removal of Trust Agreement).

[12] *See infra* Section III.D (Member Ownership Restriction).

[13] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(1).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* ISE Notice, *supra* note 3 at 30351–52; ISE Gemini Notice, *supra* note 3, at 30387; and ISE Mercury Notice, *supra* note 3, at 30404.

[17] *See* ISE Notice, *supra* note 3 at 30352; ISE Gemini Notice, *supra* note 3, at 30387; and ISE Mercury Notice, *supra* note 3, at 30404.

[18] Furthermore, the Commission does not believe that ownership by a single holding company of multiple SROs presents any burden on competition in violation of the Act. The Commission notes that, although the Transaction will result in Nasdaq owning six national securities exchanges that trade options, the Commission's approval of new option exchange registrations in recent years highlights that there continues to be competition among market centers that trade options. *See, e.g.,* Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (order approving application for exchange registration of ISE Mercury, LLC) ("ISE Mercury Exchange Registration"); 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (order approving rules governing the trading of options on the EDGX Options Market); 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (order approving application for exchange registration of Topaz Exchange, LLC (n/k/a ISE Gemini, LLC)) ("ISE Gemini Exchange Registration"); 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (order approving application for exchange registration of Miami International Securities Exchange, LLC); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (order approving rules governing the trading of options on the BATS Options Exchange).

[19] 15 U.S.C. 78s(b).

[20] 17 CFR 240.19b–4.

[21] *See* Securities Exchange Act Release Nos. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101) (order approving acquisition of ISE Holdings by Eurex Frankfurt) ("Eurex Frankfurt Acquisition Order"). *See also* ISE Mercury Exchange Registration and ISE Gemini Exchange Registration, *supra* note 18. The Non-U.S. Upstream Owner Resolutions are rules of an exchange if they are stated policies, practices, or interpretations (as defined in Rule 19b–4 under the Act) of an exchange, and must therefore be filed with the Commission pursuant to section 19(b)(4) of the Act and Rule 19b–4 thereunder. *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27).

[22] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27).

The Nasdaq governing documents provide the following provisions, which are designed to ensure that each self-regulatory subsidiary can carry out its self regulatory obligations. The Nasdaq Bylaws specify that Nasdaq and its officers, directors, and employees irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and each self-regulatory subsidiary for the purposes of any suit, action, or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of any self-regulatory subsidiary.[26] Nasdaq also agrees to provide the Commission with access to its books and records relating to the activities of each self-regulatory subsidiary.[27] Further, Nasdaq (along with its respective board members, officers, and employees) agrees to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the self-regulatory subsidiaries, including, but not limited to, disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of such subsidiaries and not use such information for any non-regulatory purposes.[28] Additionally, the board of directors of Nasdaq ("Nasdaq Board"), as well as its officers and employees are required to give due regard to the preservation of the independence of each self-regulatory subsidiary's self-regulatory function,[29] and the Nasdaq Board, when evaluating any issue, is required to take into account the potential impact on the integrity, continuity, and stability of the self-regulatory subsidiaries.[30] The Nasdaq Bylaws also require that any changes to the Nasdaq governing documents be submitted to the board of directors of each of its self-regulatory subsidiaries, and, if such amendment is required to be filed with the Commission pursuant to Section 19(b) of the Act, such change shall not be effective until filed with, or filed with and approved by, the Commission.[31] The requirement to submit changes to the board of directors of each self-regulatory subsidiary continues for so long as Nasdaq, directly or indirectly, controls any such subsidiary.[32]

In addition, similar to the ISE Holdings COI,[33] the Nasdaq COI imposes limits on direct and indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of its self-regulatory subsidiaries and to ensure that such subsidiaries and the Commission are able to carry out their regulatory obligations under the Act. Specifically, no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%.[34] This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of the Exchanges and facilitates the Exchanges' and the Commission's ability to carry out their regulatory obligations under the Act. The Nasdaq Board, however, may approve exemptions from the 5% voting limitation for any person that is not a registered broker or dealer, an affiliate of a registered broker or dealer, or a person subject to a statutory disqualification under Section 3(a)(39) of the Act,[35] provided that the Nasdaq Board also determines that granting such exemption would be consistent with the self-regulatory obligations of its self-regulatory subsidiaries.[36] Further, any such exemption from the 5% voting limitation would not be effective until such resolution has been filed with and approved by the Commission pursuant to Section 19 of the Act.[37]

For the foregoing reasons, the Commission believes that the Nasdaq governing documents are reasonably designed to facilitate the Exchanges' ability to fulfill their self-regulatory obligations and are, therefore, consistent with the Act. Additionally, as discussed further below, the Commission also believes that the provisions in the Nasdaq governing documents should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchanges to effectively carry out their regulatory oversight responsibilities under the Act. In this regard, the Commission finds that the proposals are consistent with Section 6(b)(1) of the Act[38] in particular, which requires, among other things, that an exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

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[23] Article I(f) of the Nasdaq Bylaws defines "self-regulatory subsidiary" to mean any subsidiary of Nasdaq that is a self-regulatory organization as defined under Section 3(a)(26) of the Act.

[24] 15 U.S.C. 78f(b).

[25] *See, e.g.*, Nasdaq Bylaws Article XII.

[26] *See* Nasdaq Bylaws Section 12.3 (Consent to Jurisdiction).

[27] *See* Nasdaq Bylaws Section 12.1(b). To the extent that they relate to the activities of the ISE, ISE Gemini, or ISE Mercury, all books, records, premises, officers, directors, and employees of Nasdaq would be deemed to be those of ISE, ISE Gemini, or ISE Mercury, as applicable. *See* Nasdaq Bylaws Section 12.1(c).

[28] *See* Nasdaq Bylaws Section 12.1(b).

[29] *See* Nasdaq Bylaws Section 12.1(a).

[30] *See* Nasdaq Bylaws Section 12.7 (Self-Regulatory Subsidiaries).

Nasdaq must also comply with federal securities laws and the rules and regulations thereunder. Further, it agrees to cooperate with the Commission and each of the self-regulatory subsidiaries pursuant to, and to the extent of, their respective regulatory authority. Moreover, Nasdaq's officers, directors, and employees are deemed to agree to cooperate with the Commission and each self-regulatory subsidiary in respect of the Commission's oversight responsibilities regarding Nasdaq's SROs and the self-regulatory functions and responsibilities of such SROs. *See* Nasdaq Bylaws Section 12.2. Further, Nasdaq will take reasonable steps necessary to cause its officers, directors, and employees to consent in writing to the applicability of provisions regarding books and records, confidentiality, jurisdiction, cooperation, and regulatory obligations, with respect to their activities related to any self-regulatory subsidiary (*see* Nasdaq Bylaws Section 12.4), and will take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the self-regulatory subsidiaries, pursuant to their regulatory authority (*see* Nasdaq Bylaws Section 12.2(a)).

[31] *See* Nasdaq Bylaws Sections 11.3 (Review by Self-Regulatory Subsidiaries) and 12.6 (Amendment to the Certificate of Incorporation).

[32] *See* Nasdaq Bylaws Section 12.6 (Amendment to the Certificate of Incorporation).

[33] *See* ISE Holdings COI, Article FOURTH, Section III.

[34] *See* Nasdaq COI, Article FOURTH, Section C.2.

[35] 15 U.S.C. 78c(a)(39).

[36] *See* Nasdaq COI, Article FOURTH, Section C.6. Specifically, the Nasdaq Board must determine that granting such exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or its self-regulatory subsidiaries or the other operations of Nasdaq and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (3) among other things, promote the prompt and accurate clearance and settlement of securities transactions. *See id.*

[37] *See* Nasdaq COI, Article FOURTH, Section C.6 and Nasdaq Bylaws Section 12.5 (Board Action with Respect to Voting Limitations of the Certificate of Incorporation).

[38] 15 U.S.C. 78s(b)(1).

The Commission also notes that, even in the absence of the governance provisions described above, under Section 20(a) of the Act, any person with a controlling interest in one of the Exchanges would be jointly and severally liable with and to the same extent that the respective Exchange is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.[39] In addition, Section 20(e) of the Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder.[40] Further, Section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been "a cause of" a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.[41] These provisions are applicable to all entities' dealings with the Exchanges, including Nasdaq.

B. Ownership Limits and Voting Limits

The Exchanges propose to amend the U.S. Exchange Holdings COI to recognize that, following the closing of the Transaction, Nasdaq will own all of the capital stock (whether common stock or preferred stock) of U.S. Exchange Holdings. The Exchanges also propose to amend the ISE Holdings COI to replace its current ownership limitations and voting limitations with a new restriction that will reinforce ISE Holdings' current ownership by U.S. Exchanges Holdings and will require U.S. Exchange Holdings to own all of the capital stock of ISE Holdings.

Currently, pursuant to the limited liability company agreements of ISE, ISE Gemini, and ISE Mercury, ISE Holdings is the sole member of each of the Exchanges.[42] Although ISE Holdings may assign its interest in any of the Exchanges, such assignment is subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act.[43]

In turn, the current ISE Holdings COI contains certain ownership limits ("Ownership Limits") and voting limits ("Voting Limits") with respect to the outstanding capital stock of ISE Holdings.[44] These provisions are designed to prevent any shareholder (or shareholders acting together) from exercising undue control over the operation of the Exchanges and to help ensure that the Exchanges and the Commission are able to carry out their regulatory responsibilities.[45] Specifically, the ISE Holdings COI Ownership Limits prohibit any person, either alone or together with its Related Persons,[46] from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings that have the right by their terms to vote in the election of members of the board of directors or on other matters which may require the approval of the holders of voting shares of ISE Holdings (other than matters affecting the rights, preferences or privileges of a particular class of capital stock) ("Voting Shares") (or in the case of any Exchange member, acting alone or together with its Related Persons, from directly or indirectly owning of record or beneficially more than 20% of the then-outstanding Voting Shares).[47] Further, the ISE Holdings COI's Voting Limits prohibit any person, either alone or together with its Related Persons, from voting or causing the voting of Voting Shares representing more than 20% of the voting power of the then-outstanding Voting Shares.[48] If a person exceeds the Ownership Limits or Voting Limits, a majority of Voting Shares then-outstanding automatically is transferred *pro rata* from the holders thereof to a Delaware statutory trust ("ISE Trust") (as described below), which is operated pursuant to the Trust Agreement.[49] However, the ISE Holdings COI allows the board of directors of ISE Holdings ("ISE Holdings Board") to waive the Ownership Limits or Voting Limits for persons other than Exchange members pursuant to an amendment to the ISE Holdings Bylaws, provided that the ISE Holdings Board makes certain determinations.[50] Such amendment, however, needs to be filed with and approved by the Commission under Section 19(b) of the Act.[51]

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[39] 15 U.S.C. 78t(a).

[40] 15 U.S.C. 78t(e).

[41] 15 U.S.C. 78u–3.

[42] *See* Section 2.1 of the Third Amended and Restated Limited Liability Company Agreement of ISE ("ISE LLC Agreement"), the Second Amended and Restated Limited Liability Company Agreement of ISE Gemini ("ISE Gemini LLC Agreement"), and the Limited Liability Company Agreement of ISE Mercury ("ISE Mercury LLC Agreement").

[43] *See* Section 7.1 of the ISE LLC Agreement, the ISE Gemini LLC Agreement, and the ISE Mercury LLC Agreement.

[44] *See* ISE Holdings COI, Article FOURTH, Section III.

[45] *See, e.g.,* Securities Exchange Release No. 51029 (April 23, 2008), 70 FR 3233, 3239–40 (January 12, 2005) (SR–ISE–2004–29).

[46] As used in the ISE Holdings COI, the term "Related Persons" means (1) with respect to any Person, any executive officer (as such term is defined in Rule 3b–7 under the Act), director, general partner, manager or managing member, as applicable, and all "affiliates" and "associates" of such Person (as such terms are defined in Rule 12b–2 under the Act). The term "Person" means an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. *See* ISE Holdings COI, Article FOURTH, Section III.

[47] *See* ISE Holdings COI, Article FOURTH, Section III.(a)(i).

[48] *See* ISE Holdings COI, Article FOURTH, Section III.(b). The Voting Limits also prohibit Persons, either alone or together with its Related Persons, from giving any consent or proxy with respect to Voting Shares representing more than 20% of the voting power of the then-outstanding Voting Shares; or from entering into certain agreements, plans or other arrangements with respect to Voting Shares. *Id.*

[49] *See* ISE Holdings COI, Article FOURTH, Section III.(c). *See also supra* note 11 and accompanying text (describing the Trust Agreement).

[50] *See* ISE Holdings COI, Article FOURTH, Sections III.(a)(i)(A), III.(a)(i)(B) and III.(b)(i). Specifically, the ISE Holdings Board must make a determination that waiver of the current Ownership Limits or Voting Limits (1) would not impair the ability of ISE Holdings or its self-regulatory subsidiaries (including the Exchanges), or a facility thereof, to carry out its functions and responsibilities under the Act and the rules thereunder; (2) is otherwise in the best interests of ISE Holdings, its stockholders, and its self-regulatory subsidiaries (including the Exchanges), or a facility thereof; and (3) would not impair the ability of the Commission to enforce the Act. *See* ISE Holdings COI, Article FOURTH, Sections III.(a)(i)(A) and III.(b)(i). However, the ISE Holdings Board may not waive the current Voting Limits as they apply to Exchange members. *See* ISE Holdings COI, Article FOURTH, Section III.(b)(i). Furthermore, the ISE Holdings Board may not waive the current Ownership Limits or Voting Limits if such waiver would result in a person subject to "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act) owning or voting shares above the Ownership Limits or Voting Limits. *See* ISE Holdings COI, Article FOURTH, Sections III.(a)(i)(B).

[51] *See* ISE Holdings COI, Article FOURTH, Sections III(a)(i)(A) and III(b)(i). In connection with the acquisition of U.S. Exchange Holdings by Nasdaq, the Exchanges propose to amend the ISE Holdings Bylaws to waive the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding capital stock of ISE Holdings following the closing of the Transaction. *See* proposed ISE Holdings Bylaws Section 11.3 (Waiver of Ownership Limits and Voting Limits to Permit Transaction). Each of the Exchanges represents that the ISE Holdings Board has made the necessary determinations pursuant to the ISE Holdings COI and approved the waiver of the current Ownership Limits and Voting Limits as applied to Nasdaq. *See* ISE Notice, *supra* note 3 at 30356–7; ISE Gemini Notice, *supra* note 3, at 30392; and ISE Mercury Notice, *supra* note 3, at 30409. For the reasons discussed herein, the Commission finds the waiver of the current Ownership Limits and Voting Limits for Nasdaq to effect the Transaction consistent with the Act.

To facilitate compliance with the Ownership Limits and Voting Limits, the U.S. Exchange Holdings COI also provides that U.S. Exchange Holdings shall take reasonable steps necessary to cause ISE Holdings to be in compliance with the Ownership Limits and Voting Limits.[52] Further, the U.S. Exchange Holdings COI requires U.S. Exchange Holdings to notify the Exchanges' board of directors and the ISE Trust if any person, either alone or together with its related persons, acquires 10%, 15%, 20%, 25%, 30%, 35%, or 40% or more of the then-outstanding shares of stock of U.S. Exchange Holdings ("U.S. Exchange Holdings Acquisition Notice Requirement").[53]

As proposed, Nasdaq would acquire all of the capital stock of U.S. Exchange Holdings. In turn, U.S. Exchange Holdings would be required to continue to hold 100% of the capital stock of ISE Holdings. To reflect this revised ownership structure, the Exchanges propose to amend Article THIRTEENTH of the U.S. Exchange Holdings COI to provide that, for so long as U.S. Exchange Holdings controls, directly or indirectly, one or more national securities exchanges, including, but not limited to, the Exchanges (each, a "Controlled National Securities Exchange") or a facility thereof, all authorized shares of stock of U.S. Exchange Holdings that are issued and outstanding will be held by Nasdaq.[54] Further, Nasdaq may not transfer or assign any shares of stock of U.S. Exchange Holdings, in whole or in part, to any Person,[55] unless such transfer or assignment is filed with, or filed with and approved by, the Commission, under Section 19 of the Act and the rules promulgated thereunder.[56]

The Exchanges also propose that, for so long as U.S. Exchange Holdings controls, directly or indirectly, one or more Controlled National Securities Exchange or a facility thereof, Nasdaq will be entitled to vote or cause the voting of all authorized shares of stock of U.S. Exchange Holdings that are issued and outstanding.[57] Nasdaq also may not transfer or assign any voting rights with respect to the stock of U.S. Exchange Holdings, in whole or in part, to any Person, unless such transfer or assignment is filed with, or filed with and approved by, the Commission, under Section 19(b) of the Act and the rules promulgated thereunder.[58]

The Exchanges also propose to delete certain provisions in the U.S. Exchange Holdings COI that are no longer applicable as a result of the above changes. Specifically, the Exchanges propose to delete the U.S. Exchange Holdings Acquisition Notice Requirement because it would no longer be relevant, given that any change in ownership of U.S. Exchange Holdings would be subject to a Commission rule filing and approval pursuant to Section 19 of the Act and the rules thereunder.[59]

Additionally, the Exchanges propose to eliminate the current Ownership Limits and Voting Limits in Section III(a) and (b) of Article FOURTH of the ISE Holdings COI. In place of these restrictions, the Exchanges propose to adopt new restrictions on the transfer or assignment of any shares of capital stock of ISE Holdings. Specifically, the Exchanges propose to amend Article FOURTH, Section III(a)(i) to provide that, for so long as ISE Holdings shall control, directly or indirectly, one or more Controlled National Securities Exchange, or a facility thereof, all authorized shares of capital stock of ISE Holdings that are issued and outstanding shall be held by U.S. Exchange Holdings. Additionally, U.S. Exchange Holdings may not transfer or assign any shares of capital stock of ISE Holdings, in whole or in part, to any Person,[60] unless such transfer or assignment is filed with, or filed with and approved by, the Commission, under Section 19 of the Act and the rules promulgated thereunder.[61]

Furthermore, for so long as ISE Holdings shall control, directly or indirectly, one or more Controlled National Securities Exchanges or a facility thereof, U.S. Exchange Holdings shall be entitled to vote or cause the voting of all authorized shares of capital stock of ISE Holdings that are issued and outstanding.[62] U.S. Exchange Holdings may not transfer or assign any voting rights with respect to the shares of capital stock of ISE Holdings, in whole or in part, to any Person, unless such transfer or assignment is filed with, or filed with and approved by, the Commission, under Section 19(b) of the Act and the rules promulgated thereunder.[63] The Exchanges also propose to delete the rule text provisions in the ISE Holdings COI that are no longer applicable as a result of the proposed amendments to the Ownership Limits and Voting Limits.[64]

The Commission previously approved the existing Ownership Limits and Voting Limits to enable the Exchanges to carry out their self-regulatory responsibilities, and to enable the Commission to fulfill its responsibilities under the Act.[65] After the closing of the Transaction, these goals would be achieved by the proposed new restrictions on the transfer or assignment of U.S. Exchange Holdings and ISE Holdings capital stock. Moreover, as discussed above, the Nasdaq COI currently includes restrictions on any person voting shares in excess of 5%.[66] Further, the Nasdaq Bylaws requires the Nasdaq Board, prior to approving an exemption from the 5% voting limitation, to determine that granting such exemption would be consistent with the Exchanges' self-regulatory obligations.[67]

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[52] *See* U.S. Exchange Holdings COI, Article THIRTEENTH.

[53] *See id.*

[54] *See* proposed U.S. Exchange Holdings COI, Article THIRTEENTH(ii). The Exchanges propose to renumber the existing text of Article THIRTEENTH as Article THIRTEENTH(i).

[55] As used in the U.S. Exchange Holdings COI, the term "Person" means an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. *See* U.S. Exchange Holdings COI, Article EIGHTH.

[56] *See* proposed U.S. Exchange Holdings COI, Article THIRTEENTH(ii).

[57] *See* proposed U.S. Exchange Holdings COI, Article THIRTEENTH(iii).

[58] *See id.*

[59] The Commission notes that other provisions in U.S. Exchange Holdings COI that are designed to maintain the independence of the self-regulatory function of the Exchanges would not be amended. *See, e.g.*, proposed U.S. Exchange Holdings COI, Articles TENTH, ELEVENTH, TWELFTH, FOURTEENTH, and FIFTEENTH; ISE Mercury Exchange Registration, *supra* note 18, at 6071–6072 (discussing these provisions).

[60] *See supra* note 46.

[61] *See* proposed ISE Holdings COI, Article FOURTH, Section III(a)(i).

[62] *See* proposed ISE Holdings COI, Article FOURTH, Section III(b)(i).

[63] *See* proposed ISE Holdings COI, Article FOURTH, Section III(b)(i).

[64] The Exchanges propose to delete the descriptions of the Ownership Limits and Voting Limits in Section III(a)(i)(x) and (y), and Section III(b)(i) of Article FOURTH of the ISE Holdings COI. The Exchange also proposes the following, related deletions from Article FOURTH of the ISE Holdings COI: (i) Section III(a)(ii) and (iii), which will cease to be relevant given the proposed replacement of the Ownership Limits; (ii) the references to "Ownership Percentage" from current Section III(a)(i)(B), (D) and (E), given the proposed requirement that all issued and outstanding shares of capital stock of ISE Holdings be held by U.S. Exchange Holdings; (iii) the references to "Voting Control Percentage" from Section III(b)(i) and (iii), which will cease to be relevant given the proposed requirement that U.S. Exchange Holdings shall be entitled to vote or cause the voting of all authorized shares of capital stock of ISE Holdings that are issued and outstanding; and (iv) Section III(c), which will cease to be relevant given that the concept of "Excess Shares" will no longer exist. The Exchanges also propose to renumber current Section III(d) of Article FOURTH of the ISE Holdings COI as Section III(c) of Article FOURTH. Finally, the Exchanges proposes to relocate the current definition of "Voting Shares," from current Section III(a)(i) of Article FOURTH to the introductory paragraph of Section III of Article FOURTH.

[65] *See* Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260, 25263 (April 28, 2006) (SR–ISE–2006–04) (reorganization of ISE into a holding company structure).

[66] *See* Nasdaq COI, Article FOURTH, Section C.2.

Accordingly, the Commission finds that the elimination of the Ownership Limits and Voting Limits and the adoption of new controls on the ownership, transfer, assignment, and voting of the capital stock of U.S. Exchange Holdings and ISE Holdings, together with the voting limitations in Nasdaq's governing documents, are reasonably designed to prevent any shareholder from exercising undue control over the operation of the Exchanges. The Commission also believes that the proposed rule changes are reasonably designed to ensure that the Exchanges and the Commission are able to carry out their regulatory obligations under the Act and thereby should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their respective regulatory oversight responsibilities under the Act.[68]

C. Removal of Trust Agreement

As described above, Section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although the ISE Trust is not an SRO, because the provisions of the Trust Agreement, pursuant to which the ISE Trust operates, are stated policies, practice, or interpretations of the Exchanges, they are rules of the Exchanges, as defined in Rule 19b–4 under the Act.[69] Accordingly, the Exchanges previously filed the Trust Agreement with the Commission pursuant to Section 19(b)(4) of the Act [70] and Rule 19b–4 thereunder.[71]

The Trust Agreement was entered into in 2007 to provide for an automatic transfer of ISE Holdings shares to the ISE Trust if a Person [72] were to obtain, through ownership of one of the non-U.S. upstream owners without prior Commission approval, an ownership or voting interest in ISE Holdings in excess of the Ownership Limits and Voting Limits.[73] The ISE Trust, and the Trust Agreement that governs the Trust, has since served as the mechanism by which the Ownership Limits and Voting Limits would be enforced in the event of a violation of those limitations.[74]

The purpose for which the ISE Trust was formed will no longer be relevant after the closing of the Transaction. As described above, the Exchanges propose to remove the Ownership Limits and Voting Limits in the ISE Holdings COI and instead propose a new requirement that Nasdaq be the holder of 100% of the capital stock of U.S. Exchange Holdings, which in turn, must hold 100% of the capital stock of ISE Holdings, unless approved by the Commission.[75] Accordingly, as of closing date of the Transaction, the Exchanges propose to delete the Trust Agreement as rules of the Exchanges.[76] In connection with the repeal of the Trust Agreement, the Exchanges also propose to remove provisions relating to the Trust Agreement and the ISE Trust from the ISE Holdings COI.[77] Similarly, the Exchanges also propose to remove references to the Trust Agreement in Article THIRTEENTH of the U.S. Exchange Holdings COI.[78] The Commission believes that these proposed changes are consistent with the Act because they provide greater clarity and remove uncertainty regarding the application of the Trust Agreement to ISE Holdings and U.S. Exchange Holdings.

The Commission believes that repealing the Trust Agreement and removing related provisions from the ISE Holdings and U.S. Exchange Holdings COIs is appropriate given the adoption of new controls on the ownership, transfer, assignment, and voting of U.S. Exchange Holdings and ISE Holdings capital stock, together with the voting limitations in the Nasdaq governing documents, discussed above.

D. Member Ownership Restriction

Each of the Exchanges also proposes to amend its rules to prohibit its members or persons associated with such members from beneficially owning, directly or indirectly, greater than 20% of the (i) then-outstanding voting Limited Liability Company Interest of ISE, ISE Gemini, or ISE Mercury, as applicable, or (ii) then-outstanding voting securities of Nasdaq (the "Member Ownership Restrictions").[79] The proposed 20% limitation on ownership of each of the Exchanges by its members replaces a similar provision being deleted in current Section III(a)(i)(y) of Article FOURTH of the ISE Holdings COI.

As the Commission has noted in the past, a member's interest in an exchange could rise to a level as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[80] A member that is a controlling shareholder of an exchange or an exchange's holding company might be tempted to exercise that controlling influence by pressuring or directing the exchange to refrain from, or the exchange otherwise may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.[81] The Commission finds that the proposed Member Ownership Restrictions, combined with the voting limitations in Nasdaq's governing documents as discussed above, are consistent with the Act, including Sections 6(b)(1) and 6(b)(5) of the Act. The Commission believes that the proposed Member Ownership Restrictions are reasonably designed to reduce the potential for an Exchanges' member to improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their respective regulatory oversight responsibilities under the Act.

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[67] *See* Nasdaq Bylaws Section 12.5 (Board Action with Respect to Voting Limitations of the Certificate of Incorporation).

[68] The Commission notes that it made similar findings in connection with its approval of the substantially similar ownership structures, and related protections, of the NASDAQ Exchange, Phlx, and BX. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550, 3552 (January 23, 2006) (order approving application for exchange registration of the NASDAQ Exchange); Phlx Acquisition Order, supra note 45, at 42877; and Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936, 46943 (August 12, 2008) (File Nos. SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving the acquisition of the Boston Stock Exchange, Inc. by The NASDAQ OMX Group, Inc.) ("BX Acquisition Order").

[69] 17 CFR 240.19b–4.

[70] 15 U.S.C. 78s(b).

[71] *See* Eurex Frankfurt Acquisition Notice, *supra* note 21. *See also* ISE Notice, *supra* note 3 at 30354; ISE Gemini Notice, *supra* note 3, at 30389; and ISE Mercury Notice, *supra* note 3, at 30406. *See also supra* note 21.

[72] Under the Trust Agreement, the term "Person" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, government or any agency or political subdivision thereof, or any other entity of any kind or nature. *See* Trust Agreement, Section 1.1.

[73] *See* ISE Notice, *supra* note 3 at 30354; ISE Gemini Notice, *supra* note 3, at 30389; and ISE Mercury Notice, *supra* note 3, at 30406.

[74] For a more detailed description of the operation of the Trust Agreement, *see* ISE Notice, *supra* note 3 at 30354; ISE Gemini Notice, *supra* note 3, at 30389; and ISE Mercury Notice, *supra* note 3, at 30406. *See also supra* note 21. *See also* Eurex Frankfurt Acquisition Order, *supra* note 21, at 71984.

[75] *See* Amendment No. 1, *supra* note 4.

[76] The Exchange also proposes that, as of the closing of the Transaction, the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust.

[77] The Exchanges also propose to retitle the U.S. Exchange Holdings COI as the "Third" Amended and Restated Certificate of Incorporation of ISE Holdings.

[78] The Exchanges also propose to (i) retitle the U.S. Exchange Holdings COI as the "Fourth" Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings, (ii) update the effective date thereof, and (iii) update references to the U.S. Exchange Holdings COI as the "Restated Certificate," which is a defined term therein.

[79] *See* proposed ISE Rule 312, proposed ISE Gemini Rule 309, and proposed ISE Mercury Rule 309. For purposes of the amended rules, each of the Exchanges also proposes to include language stating that any calculation of the voting Limited Liability Company Interest of each of the Exchanges or the voting securities of Nasdaq outstanding at any particular time shall be made in accordance with the last sentence of Commission Rule 13d–3(d)(1)(i)(D) and the term "beneficially owned," including all derivative or similar words, shall have the meaning set forth in the Nasdaq COI. Each of the Exchanges also proposes to delete obsolete language in the amended rule that provides that nothing in the rule shall prohibit a member (and, in the case of proposed ISE Rule 312, or non-member owner) from acquiring or holding any equity interest in ISE Holdings that is permitted by the ISE Holdings COI given the modifications to the ownership structure of ISE Holdings discussed in Section III.B (Ownership Limits and Voting Limits).

[80] *See, e.g.*, BX Acquisition Order, *supra* note 68, at 46942.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning: Amendment No. 1 to File Nos. SR–ISE–2016–11, SR–ISE Gemini–2016–05, and SR–ISE Mercury–2016–10, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2016–11, SR–ISE Gemini–2016–05, or SR–ISE Mercury–2016–10, as applicable, on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–ISE–2016–11, SR–ISE Gemini–2016–05, SR–ISE Mercury–2016–10, as applicable. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE, ISE Gemini, or ISE Mercury, as applicable. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Numbers SR–ISE–2016–11, SR–ISE Gemini–2016–05, or SR–ISE Mercury–2016–10, as applicable, and should be submitted on or before July 18, 2016.

V. Accelerated Approval of Proposed Rule Changes, as Modified by Their Respective Amendment No. 1

The Commission, pursuant to Section 19(b)(2) of the Act,[82] finds good cause for approving the proposed rule changes, as modified by their respective Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchanges propose to amend the ISE Holdings COI and U.S. Exchange Holdings COI to remove the Ownership Limits and Voting Limits and adopt new controls on the ownership, transfer, assignment, and voting of the capital stock of U.S. Exchange Holdings and ISE Holdings.[83] Amendment No. 1 also made certain conforming changes to the ISE Holdings COI and U.S. Exchange Holdings COI in connection with the removal of the Ownership Limits and Voting Limits.[84] In addition, each of the Exchanges proposes to amend one of their existing rules limiting the affiliation between ISE, ISE Gemini, or ISE Mercury and their respective members by adopting the Member Ownership Restrictions.[85] As discussed more fully above, the Commission believes that the amended Ownership Limits and Voting Limits, along with the ancillary modifications related thereto, are reasonably designed to prevent any shareholder from exercising undue control over the operation of each of the Exchanges. Furthermore, as stated above, the Commission believes that the proposed Membership Ownership Restrictions are reasonably designed to reduce the potential for an Exchanges' member to improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their respective regulatory oversight responsibilities under the Act. Accordingly, the Commission finds good cause for approving the proposed rule changes, as modified by their respective Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[86] that the proposed rule changes (SR–ISE–2016–11; SR–ISE Gemini–2016–05; SR–ISE Mercury–2016–10), as modified by their respective Amendment No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15067 Filed 6–24–16; 8:45 am]

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[81] *See id.*

[82] 15 U.S.C. 78s(b)(2).

[83] *See supra* Section III.B (Ownership Limits and Voting Limits).

[84] *See supra* notes 54 and 64.

[85] *See supra* Section III.D (Member Ownership Restriction).

[86] 15 U.S.C. 78f(b)(2).

[87] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78112; File No. SR–BatsEDGX–2016–23]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

June 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c) ("Fee Schedule") to add fee codes NA and NB.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange previously filed a proposed rule change with the Commission to include a Non-Displayed[6] instruction on orders routed to an away Trading Center.[7] The Exchange intends to implement this functionality on June 1, 2016.[8] Because other Trading Centers typically provide different rebates or fees with respect to non-displayed liquidity the Exchange proposes to amend its Fee Schedule to add fee codes NA and NB, which would apply to orders routed with a Non-Displayed instruction. Proposed fee code NA would be applied to orders that include a Non-Displayed instruction that are routed to and add liquidity on Bats BZX Exchange, Inc. ("BZX"), the New York Stock Exchange, Inc. ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE MKT LLC ("NYSE MKT"), or the Nasdaq Stock Market LLC ("Nasdaq").[9] Orders that yield fee code NA would not be charged a fee nor receive a rebate in both securities priced at or above $1.00 or below $1.00. Proposed fee code NB would be applied to orders that include a Non-Displayed instruction and are routed to and add liquidity on any exchange not listed in proposed fee code NA. Orders that yield fee code NB would be charged a fee of $0.0030 per share in securities priced at or above $1.00 and 0.30% of the trade's total dollar value in securities priced below $1.00.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule effective immediately.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed fee codes are equitable and non-discriminatory in they would apply uniformly to all Members. The Exchange believes the rates remains competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

In particular, the Exchange believes that the proposed fee codes represent an equitable allocation of reasonable dues, fees, and other charges. The proposed fees are similar to and based on the fees and rebates assessed or provided to Bats Trading when routing to away Trading Centers. For instance, like proposed fee code NA, the NYSE, NYSE Arca, and Nasdaq charge no fee nor provide a rebate for non-displayed orders that add liquidity.[13] In addition, the exchanges that would be covered by proposed fee code NB charge a fee of up to $0.0030 per share to add liquidity.[14] In addition, the proposed rate for fee code NB is equal to or greater than similar routing fees charged by other exchanges. For example, the NYSE, NYSE MKT, Nasdaq, and BZX charge a fee of $0.0030 per share and NYSE Arca charges a fee of $0.0035 per share regardless of which destination the order is routed.[15]

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[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] *See* Exchange Rule 11.6(e)(2).

[7] The Exchange notes that the Exchange also amended its rules to route orders with a Reserve Quantity (as defined in Rule 11.6(m)) as such to other Trading Centers. *See* Securities Exchange Act 77189 (February 19, 2016), 81 FR 9571 (February 25, 2016) (SR–EDGX–2016–08). Orders to be routed with a Non-Displayed instruction or a Reserve Quantity would be handled in accordance with the rules of the Trading Center to which they are routed. *Id.* This proposal does not impact orders routed with a Reserve Quantity.

[8] *See Bats Announces Support for Hidden Post-to-Away Routed Orders, available at http://cdn.batstrading.com/resources/release_notes/2016/Bats-Announces-Support-for-Hidden-Post-to-Away-Routed-Orders.pdf.*

[9] Today, all orders that are routed to post to an away market are routed for display on such market and receive the following rates: (i) Rebate of $0.0015 per share for orders routed to the NYSE; (ii) rebate of $0.0021 per share for Tapes A and C securities and a rebate of $0.0022 per share for Tape B securities for orders routed to NYSE Arca; (iii) rebate of $0.0015 per share for orders routed to NYSE MKT; (iv) rebate of $0.0015 per share for orders routed to Nasdaq; and (v) a rebate of $0.0020 per share for orders routed to BZX. *See* the Exchange's Fee Schedule *available at http://batstrading.com/support/fee_schedule/edga/*. These rates generally represent a pass through of the rate that Bats Trading, Inc. ("Bats Trading"), the Exchange's affiliated routing broker-dealer, is provided for adding displayed liquidity at NYSE, NYSE Arca, NYSE MKT, Nasdaq, or BZX when it does not qualify for a volume tiered reduced fee or enhanced rebate.

[10] The Exchange initially filed the proposed fee change on May 31, 2016 (SR–BatsEDGX–2016–20). On June 8, 2016, the Exchange withdrew SR–BatsEDGX–2016–20 and submitted this filing.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] *See* the NYSE fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf* (dated May 23, 2016); the NYSE Arca fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (dated May 23, 2016); *and* the Nasdaq fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*. The Exchange notes that NYSE MKT and BZX provide a rebate of $0.0016 and $0.0017 per share respectively for non-displayed orders that add liquidity. *See* the NYSE MKT fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/NYSE_MKT_Equities_Price_List.pdf* (dated May 23, 2016); *and* the BZX fee schedule *available at http://batstrading.com/support/fee_schedule/bzx/*.

[14] *See* the Bats BYX Exchange Inc. fee schedule *available at http://batstrading.com/support/fee_schedule/byx/;* the Bats EDGA Exchange, Inc. fee schedule *available at http://batstrading.com/support/fee_schedule/edga/;* and the Nasdaq BX, Inc. fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.* The Exchange notes that it currently does not provide for routing orders to post on the Chicago Stock Exchange, Inc. or the National Stock Exchange, Inc.

[15] *See supra* note 13. Nasdaq charges a fee of $0.0035 per share for routed orders that are directed

The Exchange notes that routing through Bats Trading is voluntary. The Exchange is providing a service to allow Members to post orders with a Non-Displayed instruction to these destinations and that those Members seeking to post such orders to away destinations may connect to those destinations directly and be charged the fee or provided the rebate from that destination. Therefore, the Exchange believes the rates for proposed fee codes NA and NB are equitable and reasonable because they are related to the rates provided by the away exchange and reasonably account for the routing service provided for by the Exchange. Lastly, the Exchange believes that the proposed amendments are non-discriminatory because it applies uniformly to all Members and that the proposed rates are directly related to rates provided by the destinations to which the orders may be routed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. For example, routing through Bats Trading is voluntary and Members seeking to post such orders to away destinations may connect to those destinations directly and be charged the fee or provide the rebate from that destination. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and paragraph (f) of Rule 19b–4 thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGX–2016–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–23, and should be submitted on or before July 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15076 Filed 6–24–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78107; File No. SR–BX–2016–036]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide a Process for an Expedited Suspension Proceeding and Adopt a Rule To Prohibit Disruptive Options Quoting and Trading Activity

June 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new options rule to clearly prohibit disruptive quoting and trading activity on the Exchange, as further described below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/,* at the

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to another market. *See* the Nasdaq fee schedule *at id.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing this proposal to adopt an options rule to clearly prohibit disruptive quoting and trading activity on the Exchange and to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule pursuant to Rule 9400.

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the Exchange's Rules. Further, the Exchange's Rules are required to be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest."[3] In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity that is both operated directly by Exchange staff and by staff of the Financial Industry Regulatory Authority ("FINRA") pursuant to a Regulatory Services Agreement ("RSA"). When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange or FINRA (acting as an agent of the Exchange) conducts an investigation into the activity, requesting additional information from the Member or Members involved. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules have been identified and confirmed, the Exchange or FINRA as its agent will commence the enforcement process, which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or even a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period is generally necessary and appropriate to afford the subject Member adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange.

In recent years, several cases have been brought and resolved by the Exchange and other SROs that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering[4] or spoofing.[5] The Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, in accordance with Exchange Rules and the Act, the Members responsible for such conduct or responsible for their customers' conduct were allowed to continue the disruptive quoting and trading activity on the Exchange and other exchanges during the entirety of the subsequent lengthy investigation and enforcement process. The Exchange believes that it should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange if a Member is engaging in or facilitating disruptive quoting and trading activity and the Member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The following two examples are instructive on the Exchange's rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (the "Firm") and its CEO were barred from the industry for, among other things, supervisory violations related to a failure by the Firm to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.[6] The Firm's sole business was to provide trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by the Firm to U.S. markets originated directly or indirectly from foreign clients of the Firm. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008. Although the Firm and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, the Firm took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the Firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (the "Firm") settled a regulatory action in connection with the Firm's provision of a trading platform, trade software and trade execution, support and clearing services for day traders.[7] Many traders using the Firm's services were located in foreign jurisdictions. The Firm ultimately settled the action with FINRA and several exchanges, including the Exchange, for a total monetary fine of $3.4 million. In a separate action, the Firm settled with the Commission for a monetary fine of $2.5 million.[8] Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, the Firm also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. The Firm was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative quoting and trading was promptly detected, it continued for several years.

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[3] 15 U.S.C. 78f(b)(1).

[4] "Layering" is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[5] "Spoofing" is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

[6] *See Biremis Corp. and Peter Beck*, FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

The Exchange also notes the current criminal proceedings that have commenced against Navinder Singh Sarao. Mr. Sarao's allegedly manipulative trading activity, which included forms of layering and spoofing in the futures markets, has been linked as a contributing factor to the "Flash Crash" of 2010, and yet continued through 2015.

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below. In addition, while the examples provided are related to the equities market, the Exchange believes that this type of conduct should be prohibited for all Exchange members, equities and options. The Exchange believes that these patterns of disruptive and allegedly manipulative quoting and trading activity need to be addressed and the product should not limit the action taken by the Exchange. For this reason, the Exchange now proposes a corresponding options rule.

Rule 9400—Expedited Client Suspension Proceeding

The Exchange adopted Rule 9400 to set forth procedures for issuing suspension orders, immediately prohibiting a Member from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures provide the Exchange the authority to order a Member to cease and desist from providing access to the Exchange to a client of the Member that is conducting disruptive quoting and trading activity in violation of Rule 2170. Paragraph (a) of Rule 9400, with the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, the Office of General Counsel or Regulatory Department of the Exchange (such departments generally referred to as the "Exchange" for purposes of Rule 9400) and may initiate an expedited suspension proceeding with respect to alleged violations of Rule 2170. Paragraph (a) also sets forth the requirements for notice and service of such notice pursuant to the Rule, including the required method of service and the content of notice.

Paragraph (b) of Rule 9400 governs the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers. The Exchange's Rules provide for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned in accordance with Rules 9233(a). In addition to recusal initiated by such a Hearing Officer, a party to the proceeding will be permitted to file a motion to disqualify a Hearing Officer. However, due to the compressed schedule pursuant to which the process would operate under Rule 9400, the rule requires such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof. Pursuant to existing Rule 9233(c), a motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer based on a prompt investigation. The applicable Hearing Officer shall remove himself or herself and request the Chief Executive Officer to reassign the hearing to another Hearing Officer such that the Hearing Panel still meets the compositional requirements described in Rule 9231(b). If the Chief Hearing Officer determines that the Respondent's grounds for disqualification are insufficient, it shall deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will proceed with the hearing.

Under paragraph (c) of the Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed. Paragraph (c) also governs how the hearing is conducted, including the authority of Hearing Officers, witnesses, additional information that may be required by the Hearing Panel, the requirement that a transcript of the proceeding be created and details related to such transcript, and details regarding the creation and maintenance of the record of the proceeding. Paragraph (c) also states that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. Finally, if the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under paragraph (d) of the Rule, the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Rule states that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Paragraph (d) also describes the content, scope and form of a suspension order. A suspension order shall be limited to ordering a Respondent to cease and desist from violating Rule 2170 and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 2170. Under the rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from. Finally, the order shall include the date and hour of its issuance. A suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), as described below. Finally, paragraph (d) requires service of the Hearing Panel's decision and any suspension order consistent with other portions of the rule related to service.

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[7] *See Hold Brothers On-Line Investment Services, LLC,* FINRA Letter of Acceptance, Waiver and Consent No. 20100237710001, September 25, 2012.

[8] *In the Matter of Hold Brothers On-Line Investment Services, LLC,* Exchange Act Release No. 67924, September 25, 2012.

Paragraph (e) of Rule 9400 states that at any time after the Hearing Officers served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, paragraph (e) of Rule 9400 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions of the modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Finally, paragraph (f) provides that sanctions issued under Rule 9400 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Rule 2170—Disruptive Quoting and Trading Activity Prohibited

The Exchange currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rules 2110, 2111, 2120 and 2170. The Exchange proposes to adopt a new rule at Chapter III, Section 16, which would more specifically define and prohibit disruptive options quoting and trading activity on the Exchange. As noted above, the Exchange also proposes to apply the proposed suspension rules to Chapter III, Section 16.

Proposed Chapter III, Section 16, would prohibit Members from engaging in or facilitating disruptive options quoting and trading activity on the Exchange, as described in proposed Chapter III, Section 16(i) and (ii), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange believes, that with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

To provide proper context for the situations in which the Exchange proposes to utilize its authority, the Exchange believes it is necessary to describe the types of disruptive options quoting and trading activity that would cause the Exchange to use its authority. Accordingly, the Exchange proposes to adopt Chapter III, Section 16(i) and (ii) providing additional details regarding disruptive options quoting and trading activity. Proposed Chapter III, Section 16(i)(a) describes disruptive options quoting and trading activity containing many of the elements indicative of layering. It would describe disruptive options quoting and trading activity as a frequent pattern in which the following facts are present: (i) A party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and (ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and (iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the "Contra-Side Orders") that are subsequently executed; and (iv) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders. Proposed Chapter III, Section 16(i)(b) describes disruptive options quoting and trading activity containing many of the elements indicative of spoofing and would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (i) A party narrows the spread for a security by placing an order inside the national best bid or offer; and (ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed (b)(i) that narrowed the spread. The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above.[9] The Exchange further believes that the proposed descriptions will provide Members with clear descriptions of disruptive options quoting and trading activity that will help them to avoid engaging in such activities or allowing their clients to engage in such activities.

The Exchange proposes to make clear in proposed Chapter III, Section 16(ii), unless otherwise indicated, the descriptions of disruptive options quoting and trading activity do not require the facts to occur in a specific order in order for the rule to apply. For instance, with respect to the pattern defined in proposed Chapter III, Section 16(i)(a) it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, supply and demand must change following the entry of the Displayed Orders. The Exchange also proposes to make clear that disruptive options quoting and trading activity includes a pattern or practice in which some portion of the disruptive options quoting and trading activity is conducted on the Exchange and the other portions of the disruptive options quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues. In sum, proposed Chapter III, Section 16 coupled with Rule 9400 would provide the Exchange with authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange.

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[9] As previously noted herein, while the examples noted in the Purpose Section of this 19b4 [sic] are related to the equities market, the Exchange believes that this type of conduct should be prohibited for all Exchange members, equities and options. The Exchange believes that these patterns of disruptive and allegedly manipulative quoting and trading activity need to be addressed and the product should not limit the action taken by the Exchange. For this reason, the Exchange now proposes a corresponding options rule.

Below is an example of how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive options quoting and trading activity. After an initial investigation the Exchange would then contact the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive options quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the Member that would include details regarding the alleged violations as well as the proposed sanction. In such a case the proposed sanction would likely be to order the Member to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such Member unless and until such action is taken.

The Member would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding.

If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the Member to cease providing access to the client at issue and suspending such Member unless and until such action is taken. If such Member wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such Member could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the Member pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.

The Exchange reiterates that it already has broad authority to take action against a Member in the event that such Member is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent cases like the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have the authority to promptly initiate expedited suspension proceedings against any Member who has demonstrated a clear pattern or practice of disruptive options quoting and trading activity, as described above, and to take action including ordering such Member to terminate access to the Exchange to one or more of such Member's clients if such clients are responsible for the activity.

The Exchange recognizes that its authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of Respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the rule by its terms is limited to violations of Chapter III, Section 16, when necessary to protect investors, other Members and the Exchange. The Exchange will initiate disciplinary action for violations of Chapter III, Section 16, pursuant to Rule 9400. Further, the Exchange believes that the expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive options quoting and trading activity.

The Exchange also notes that that it may impose temporary restrictions upon the automated entry or updating of orders or quotes/orders as the Exchange may determine to be necessary to protect the integrity of the Exchange's systems pursuant to Rule 4611(c).[10] Also, pursuant to Rule 9555(a)(2)[11] if a member, associated person, or other person cannot continue to have access to services offered by the Exchange or a member thereof with safety to investors, creditors, members, or the Exchange, the Exchange's Regulation Department staff may provide written notice to such member or person limiting or prohibiting access to services offered by the Exchange or a member thereof. This ability to impose a temporary restriction upon Members assists the Exchange in maintaining the integrity of the market and protecting investors and the public interest.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of Rule 2170 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[14] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other Members and their customers. Also, the Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The expedited process would enable the Exchange to address the behavior with greater speed.

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[10] For example, such temporary restrictions may be necessary to address a system problem at a particular BX Market Maker, BX ECN or Order Entry Firm or at the Exchange, or an unexpected period of extremely high message traffic.

[11] *See* Rule 9555, entitled "Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services."

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

As explained above, the Exchange notes that it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing [15] to eliminate an express intent element that would not be proven on an expedited basis and would instead require a thorough investigation into the activity. As noted throughout this filing, the Exchange believes it is necessary for the protection of investors to make such modifications in order to adopt an expedited process rather than allowing disruptive quoting and trading activity to occur for several years.

Through this proposal, the Exchange does not intend to modify the definitions of spoofing and layering that have generally been used by the Exchange and other regulators in connection with actions like those cited above. The Exchange believes that the pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008 in the equities markets.[16] The Exchange believes that this proposal will provide the Exchange with the necessary means to enforce against such behavior in an expedited manner while providing Members with the necessary due process. The Exchange believes that its proposal is consistent with the Act because it provides the Exchange with the ability to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest from such ongoing behavior.

Further, the Exchange believes that adopting a rule applicable to Options Participants is consistent with the Act because the Exchange believes that this type of behavior should be prohibited for all members, not just equities members. The type of product should not be the determining factor, rather the behavior which challenges the market structure is the primary concern for the Exchange. While this behavior may not be as prevalent on the options market today, the Exchange does not believe that the possibility of such behavior in the future would not have the same market impact and thereby warrant an expedited process. The Exchange believes that treating all members, equities and options, in a uniform manner with respect to the type of disciplinary action that would be taken for violations of manipulative quoting and trading activity is consistent with the Act.

The Exchange further believes that the proposal is consistent with Section 6(b)(7) of the Act,[17] which requires that the rules of an exchange "provide a fair procedure for the disciplining of members and persons associated with members . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof." Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act,[18] which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: Provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within Rule 9400. Importantly, as noted above, the Exchange will use the authority only in clear and egregious cases when necessary to protect investors, other Members and the Exchange, and in such cases, the Respondent will be afforded due process in connection with the suspension proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on its market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other Members and the Exchange. The Exchange also believes that it is important for all exchanges to be able to take similar action to enforce their rules against manipulative conduct thereby leaving no exchange prey to such conduct.

The Exchange does not believe that the proposed rule change imposes an undue burden on competition, rather this process will provide the Exchange with the necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Members with the necessary due process. The Exchange believes that adopting a rule applicable to Options Participants does not impose an undue burden on competition because this type of behavior should be prohibited for all members, not just equities members. The Exchange's proposal would treat all members, equities and options, in a uniform manner with respect to the type of disciplinary action that would be taken for violations of manipulative quoting and trading activity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and subparagraph (f)(6) of Rule 19b–4 thereunder.[20]

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[15] *See supra,* notes 4 and 5.

[16] *See* Section 3 [sic] herein, the Purpose section, for examples of conduct referred to herein.

[17] 15 U.S.C. 78f(b)(7).

[18] U.S.C. 78f(d)(1).

[19] 15 U.S.C. 78s(b)(3)(a)(iii).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BX–2016–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BX–2016–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2016–036, and should be submitted on or before July 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15071 Filed 6–24–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Caspian International Oil Corporation, Elevate, Inc., Frawley Corporation, Groen Brothers Aviation, Inc., and Logic Devices, Incorporated; Order of Suspension of Trading

June 23, 2016.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of Caspian International Oil Corporation ("CIOC [1]") (CIK No. 816958), a void Delaware corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Securities Exchange Act of 1934 ("Exchange Act") Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2008. On April 12, 2011, the Commission's Division of Corporation Finance ("Corporation Finance") sent a delinquency letter to CIOC requesting compliance with its periodic filing requirements but CIOC did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual) ("Commission Issuer Address Rules"). As of June 16, 2016, the common stock of CIOC was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had two market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Elevate, Inc. ("ELEV") (CIK No. 1424415), a defaulted Nevada corporation located in San Clemente, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended February 29, 2012. On January 28, 2016, Corporation Finance sent a delinquency letter to ELEV requesting compliance with its periodic filing requirements but ELEV did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission Issuer Address Rules. As of June 16, 2016, the common stock of ELEV was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Frawley Corporation ("FRWL") (CIK No. 38824), a void Delaware corporation located in Agoura Hills, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–K for the period ended December 31, 2011. On November 21, 2011, Corporation Finance sent a delinquency letter to FRWL requesting compliance with its periodic filing requirements but FRWL did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission Issuer Address Rules. As of June 16, 2016, the common stock of FRWL was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Groen Brothers Aviation, Inc. ("GNBA") (CIK No. 870743), an expired Utah corporation located in Salt Lake City, Utah with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–K for the period ended June 30,

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Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 200.30–3(a)(12).

[1] The short form of each issuer's name is also its stock symbol.

2012. On February 22, 2016, Corporation Finance sent a delinquency letter to GNBA requesting compliance with its periodic filing requirements but GNBA did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission Issuer Address Rules. As of June 16, 2016, the common stock of GNBA was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Logic Devices, Incorporated ("LOGC") (CIK No. 802851), a suspended California corporation located in Sunnyvale, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended June 30, 2012. On November 14, 2013, Corporation Finance sent a delinquency letter to LOGC requesting compliance with its periodic filing requirements but LOGC did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission Issuer Address Rules. As of June 16, 2016, the common stock of LOGC was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 23, 2016, through 11:59 p.m. EDT on July 7, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–15214 Filed 6–23–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78110; File No. SR–CBOE–2016–050]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Order Marking

June 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to update certain order marking requirements. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.9. Solicited Transactions

A Trading Permit Holder or TPH organization representing an order respecting an option traded on the Exchange (an "original order"), including a spread, combination, or straddle order as defined in Rule 6.53, a stock-option order as defined in Rule 1.1(ii), a security future-option order as defined in Rule 1.1(zz), or any other complex order as defined in Rule 6.53C, may solicit a Trading Permit Holder or TPH organization or a non-Trading Permit Holder customer or broker-dealer (the "solicited person") to transact in-person or by order (a "solicited order") with the original order. In addition, whenever a floor broker who is aware of, but does not represent, an original order solicits one or more persons or orders in response to an original order, the persons solicited and any resulting orders are solicited persons or solicited orders subject to this Rule. Original orders and solicited orders are subject to the following conditions.

(a)–(e) No change.

(f) All orders initiated as a result of a solicitation must be marked ["SL."] *in a manner and form prescribed by the Exchange and announced via Regulatory Circular.* [If the solicited person is on the trading floor and elects to participate by order, the solicited person must retain a copy of the solicited order on the trading floor so long as the order is active.]

* * * * *

Rule 6.53. Certain Types of Orders Defined

One or more of the following order types may be made available on a class-by-class basis. Certain order types may not be made available for all Exchange systems. The classes and/or systems for which the order types shall be available will be as provided in the Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

(a)–(f) No change.

(g) Not Held Order. A not held order is an order marked "not held", "take time" or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed. An order entrusted to a Floor Broker will be considered a Not Held Order, unless otherwise specified by a Floor Broker's client or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the order entry firm's routing instructions. *Not Held Orders and/or "held" orders must be marked in a manner and form prescribed by the Exchange and announced via Regulatory Circular.*

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update order marking requirements applicable to solicited orders under Rule 6.9(f) and Not Held Orders under Rule 6.53(g).

Rule 6.9 governs the procedures and priority applicable to the open outcry execution of an order solicited (a "solicited order") by a Trading Permit Holder or TPH organization representing an order respecting an option traded on the Exchange (an "original order").[5] Rule 6.9(f) currently provides that orders initiated as a result of a solicitation must be marked "SL." The requirement to mark an order "SL" was implemented when paper order tickets were utilized on the floor of the Exchange, and the marking requirement has not been updated since paper order tickets stopped being used. Thus, the Exchange is proposing to update Rule 6.9(f) by proposing that all orders initiated as a result of a solicitation must be marked in a manner and form prescribed by the Exchange and announced via Regulatory Circular.[6]

The Exchange, through a third-party vendor, is in the process of updating the Exchange provided Floor Broker Workstation ("FBW2")[7] and has updated Exchange provided PULSe to enable TPHs to mark solicited orders upon systematization. Additionally, the Exchange is in the process of updating the Public Automatic Routing System ("PAR") and the Order Management Terminal ("OMT") to allow orders that are identified as solicited orders to be captured in the electronic audit trail. The Exchange will not implement any solicited order marking requirement changes pursuant to amended Rule 6.9(f) until the enhancements to FBW2, PULSe, PAR, and OMT are complete.

Rule 6.53(g) defines a "Not Held Order" as an order marked "not held", "take time" or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed.[8] On June 25, 2015, the Securities and Exchange Commission (the "Commission") approved a rule filing providing that an order entrusted to a Floor Broker is considered a Not Held Order, unless otherwise specified by a Floor Broker's client or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the order entry firm's routing instructions.[9]

Although SR–CBOE–2015–047 provides that orders entrusted to Floor Brokers are by default Not Held Orders, the Exchange currently requires Not Held Orders to be proactively marked as Not Held Orders.[10] Orders that are not proactively marked as Not Held Orders are treated as "held" for regulatory purposes. However, the Exchange is in the process of updating PAR and OMT to instead allow certain orders that are not proactively marked as "held" to be considered Not Held Orders, which reflects the fact that orders entrusted to Floor Brokers are by default Not Held Orders. Although it's reasonably implied from current Rule 6.53(g) that an order that is "held" would need to be marked in a manner to differentiate them from Not Held Orders, the Exchange proposes to amend Rule 6.53(g) to explicitly provide that Not Held Orders and/or "held" orders must be marked in a manner and form prescribed by the Exchange and announced via Regulatory Circular. The Exchange will not modify the current Not Held marking requirements[11] pursuant to amended Rule 6.53(g) until the enhancements to PAR and OMT are complete.

The Exchange will announce the implementation date of this rule filing via Regulatory Circular at least 30 days prior to the implementation date. The implementation date will be within 180 days of the effective date of this filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed amendment to Rule 6.9(f) would promote just and equitable principles of trading by enhancing the Exchange's audit trail. An enhanced audit trail will help the Exchange to regulate these kinds of orders more thoroughly, which should serve to promote just and equitable trading of solicited orders on the Exchange. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[15] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange. With an enhanced audit trail of solicited orders, the Exchange believes it will be able to more comprehensively monitor the trading of solicited orders on the Exchange.

The proposed addition to Rule 6.53(g) removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by eliminating any potential confusion as to whether TPHs must proactively mark certain orders as "held" instead of proactively marking certain orders as Not Held Orders, which reflects the fact that orders entrusted to Floor Brokers are by default Not Held Orders.

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[5] Rule 6.9 specifically sets forth rules governing the priority of a solicited order when the terms of the original order were either disclosed to the trading crowd prior to the solicitation (Rule 6.9(a)(b) and (c)) or disclosed to the trading crowd after the solicitation (Rule 6.9(d)); prohibiting trading based on knowledge of an imminent undisclosed solicited transactions (Rule 6.9(e)); and requiring solicited orders be marked as such (Rule 6.9(f)).

[6] The Exchange proposes to remove the requirement that if the solicited person is on the trading floor and elects to participate by order, the solicited person must retain a copy of the solicited order on the trading floor so long as the order is active. The requirement is no longer relevant as orders are captured in the electronic audit trail.

[7] *See* RG16–052.

[8] A "Not Held" order generally is one where the customer gives the Floor Broker discretion in executing the order, both with respect to the time of execution and the price (though the customer may specify a limit price), and the Floor Broker works the order over a period of time to avoid market impact while seeking best execution of the order.

[9] *See* Securities Exchange Act Release No. 75299 (June 25, 2015), 80 FR 37700 (July 1, 2015) (SR–CBOE–2015–047) (Approval Order).

[10] *See* Regulatory Circular RG15–136.

[11] *Id.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] 15 U.S.C. 78f(b)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed rule change will not impose any burden on any intramarket competition as it will be applied to similarly situated groups trading on the Exchange equally. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition as the proposed changes merely amends existing TPH obligations related to the marking of solicited orders, "held" orders, and Not Held Orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)[17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–050 and should be submitted on or before July 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15074 Filed 6–24–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10102; 34–78127; File No. 265–28]

Investor Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of Securities and Exchange Commission Dodd-Frank Investor Advisory Committee.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Thursday, July 14, 2016 from 9:00 a.m. until 3:30 p.m. (ET). Written statements should be received on or before July 14, 2016.

ADDRESSES: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC 20549. The meeting will be webcast on the Commission's Web site at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Statements

- Send paper statements to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room,

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 200.30–3(a)(12).

100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Marc Oorloff Sharma, Senior Special Counsel, Office of the Investor Advocate, at (202) 551–3302, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, except during that portion of the meeting reserved for an administrative work session during lunch. Persons needing special accommodations to take part because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT.**

The agenda for the meeting includes: Remarks from Commissioners; the nomination of candidates for open officer positions; a discussion regarding investment company reporting modernization; a discussion of the state of sustainability reporting; the announcement of election results for open officer positions; a discussion of Electronic Communications Privacy Act amendments; and a nonpublic administrative work session during lunch.

Dated: June 22, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–15109 Filed 6–24–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Rebornne (USA) Inc.; Order of Suspension of Trading

June 23, 2016

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of Rebornne (USA) Inc. ("RBOR[1]") (CIK No. 1268238), a Florida corporation located in Auckland City, Auckland, New Zealand with a class of securities registered with the Commission pursuant to Securities Exchange Act of 1934 ("Exchange Act") Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended December 31, 2011. On January 29, 2016, the Commission's Division of Corporation Finance ("Corporation Finance") sent a delinquency letter to RBOR requesting compliance with its periodic filing requirements but RBOR did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of June 16, 2016, the common stock of RBOR was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets"), had two market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on June 23, 2016, through 11:59 p.m. EDT on July 7, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–15210 Filed 6–23–16; 11:15 am]

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[1] The short form of the issuer's name is also its stock symbol.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78116; File No. SR–Phlx–2016–69]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange's Pricing Schedule

June 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule ("Pricing Schedule") at Section B, entitled "Customer Rebates," and Section IV, Part E., entitled "Market Access and Routing Subsidy ("MARS")" [3] to propose a change regarding the MARS Payment.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Exchange's Pricing Schedule at Section IV, Part E. to propose two MARS Payment levels and at Section B to propose a MARS incentive to obtain higher rebates.

Change 1—New MARS Payment Tiers

The Exchange proposes to amend the MARS Eligible Contracts to remove the "at least 30,000 Eligible Contracts" requirement and replace it with two-tier pricing in the MARS Payment section.

The Exchange proposes to amend the MARS Payment to offer two tiers for MARS Payment. Proposed Tier 1 would offer a MARS Payment of $0.01 per contract to Phlx members that have executed 1,000 average daily volume ("ADV") or more contracts.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Multiply Listed Options Fees include fees on options overlying equities, exchange traded funds ("ETFs"), exchange traded notes ("ETNs"), and indexes which are Multiply Listed.

[4] MARS and MARS Payment are discussed below.

Proposed Tier 2, which is similar to the current MARS Payment threshold of at least 30,000 contracts in a month, would offer a MARS Payment of $0.10 per contract to Phlx members that have executed 30,000 ADV in a month or more contracts. In each instance all of the contracts have to be executed on Phlx.

For the purpose of qualifying for the Tier 1 or Tier 2 MARS Payment, Eligible Contracts would continue to include Firm,[5] Broker-Dealer,[6] Joint Back Office, or "JBO"[7] or Professional[8] equity option orders that are electronically delivered and executed.[9]

MARS is a subsidy program that pays Phlx members that provide certain order routing functionalities to other Phlx members and/or use such functionalities[10] themselves. Generally, under MARS, Phlx makes payments to participating Phlx members to subsidize their costs of providing routing services to route orders to Phlx. The proposed amendments to MARS are intended to attract higher volumes of electronic equity and ETF options volume to the Exchange from non-Phlx market participants as well as Phlx members.

To qualify for MARS, a Phlx member's order routing functionality is required to complete a form[11] and meet certain criteria.[12] With respect to Complex Orders,[13] a Phlx member's routing system would not be required to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges.

Section IV, Part E. of the Exchange's Pricing Schedule provides that Phlx members that have executed the required MARS Eligible Contracts ("Eligible Contracts") may receive the MARS Payment on all their Eligible Contracts. The Exchange proposes to make the MARS Payment tiered according to ADV, as discussed.

The Exchange believes that the proposed change will incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities.

Currently, Section IV, Part E. in the Pricing Schedule states that a MARS Payment is made to Phlx members that have System Eligibility and have routed and executed at least 30,000 Eligible Contracts daily in a month on Phlx.

For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, JBO, or Professional equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or "QCC" orders,[14] price improvement or "PIXL" orders,[15] Mini Option[16] orders or Singly Listed Orders.[17]

Today, Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of $0.10 per contract. No payment is made with respect to orders that are routed to Phlx, but not executed.

The Exchange believes that the MARS Payment will subsidize the costs of Phlx members in providing the routing services. The Exchange does not propose to amend the MARS System Eligibility.

In addition to amending the MARS Eligible Contracts section to remove the "at least 30,000 Eligible Contracts" requirement and replace it with two-tier pricing payments in the MARS Payment section, as described above, the Exchange also proposes to add a sentence that summarizes when MARS Payments will be paid.

The proposed sentence indicates, in one place, that a MARS Payment will be paid on all executed Eligible Contracts that are routed to Phlx through a participating Phlx member's System, and that meet the requisite eligible ADV contracts.

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[5] The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. *See* Preface to the Phlx's Pricing Schedule.

[6] The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. *See* Preface to the Phlx's Pricing Schedule.

[7] A member, member organization or non-member organization may maintain a JBO arrangement with a clearing broker-dealer subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System. *See also* Rule 703.

[8] The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[9] A Phlx member is not entitled to receive any other revenue for the use of its System specifically with respect to orders routed to Phlx, with the exception of Payment for Order Flow. This requirement does not prevent the member from charging fees (for example, a flat monthly fee) for the general use of its System. Nor does it prevent the member from charging fees or commissions in accordance with its general practices with respect to transactions effected through its System. The Payment for Order Flow ("PFOF") Program assesses fees to Specialists and Market Makers resulting from Customer orders. These PFOF Fees are available to be disbursed by the Exchange according to the instructions of the Specialist or Marker Maker to order flow providers who are members or member organizations who submit, as agent, customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders.

[10] The order routing functionalities permit a Phlx member to provide access and connectivity to other members as well as utilize such access for themselves. The Exchange notes that under this arrangement it will be possible for one Phlx member to be eligible for payments under MARS, while another Phlx member might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a Phlx member's connection to the Exchange and that member qualified for the MARS Payment. Consider the following example: Both members A and B are Phlx members but A does not utilize its own connections to route orders to the Exchange, and instead utilizes B's connections. Under this program, B will be eligible for the MARS Payment while A is liable for any transaction charges resulting from the execution of orders that originate from A, arrive at the Exchange via B's connectivity, and subsequently execute and clear at The Options Clearing Corporation or "OCC," where A is the valid executing clearing member or give-up on the transaction. Similarly, where B utilizes its own connections to execute transactions, B will be eligible for the MARS Payment, but would also be liable for any transaction resulting from the execution of orders that originate from B, arrive at the Exchange via B's connectivity, and subsequently execute and clear at OCC, where B is the valid executing clearing member or give-up on the transaction.

[11] The Exchange requires Phlx members desiring to participate in MARS to complete a form, in a manner prescribed by the Exchange, and reaffirm their information on a quarterly basis to the Exchange. Any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System. The member is solely responsible for implementing and operating its System.

[12] Specifically the member's routing system (hereinafter "System") is required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's API to access current Phlx match engine functionality. The member's System would also need to cause Phlx to be one of the top three default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override Phlx as the default destination on an order-by-order basis.

[13] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .07(a)(i).

[14] A QCC Order is comprised of an order to buy or sell at least 1000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the NBBO and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the Exchange's match engine. *See* Rule 1080(o).

[15] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL^{SM}). *See* Rule 1080(n).

[16] Mini Options are further specified in Phlx Rule 1012, Commentary .13.

[17] Singly Listed Options are options overlying currencies, equities, ETFs, ETNs treasury securities and indexes not listed on another exchange.

The proposed summary sentence is similar to another options market with MARS Payments, namely the NASDAQ Options Market LLC ("NOM").[18] The tiered MARS Payment system as proposed for Phlx is similar in structure to the existing MARS subsidy program on NOM.[19]

The Exchange believes that the fees and rebates in its Pricing Schedule are structured to attract liquidity. The Exchange believes that the proposed tiered MARS Payment schedule will further encourage Phlx members to transact additional liquidity on the Exchange.

Change 2—Customer Rebate Program

Currently, the Exchange has a Customer Rebate Program consisting of five tiers that pay Customer rebates on three Categories, A,[20] B,[21] and C[22] of transactions.[23] A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx, excluding SPY Options.[24] The Exchange calculates Customer volume in Multiply Listed Options, including SPY, by totaling electronically-delivered and executed volume, excluding volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o).[25]

The Exchange now pays the following rebates:[26]

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes, excluding SPY options (monthly)	Category A	Category B	Category C
Tier 1	0.00%–0.60%	$0.00	$0.00	$0.00
Tier 2	Above 0.60–1.10	*0.10	*0.10	*0.17
Tier 3	Above 1.10–1.60	0.15	*0.12	*0.17
Tier 4	Above 1.60–2.50	0.20	0.16	0.22
Tier 5	Above 2.50	0.21	0.17	0.22

The Exchange proposes to pay a $0.05 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebates to members or member organizations or member or member organization affiliate under Common Ownership provided the member or member organization qualified for a Tier 1 or 2 MARS Payment in Section IV, Part E. The Exchange's proposal is intended to attract additional Customer volume to the Exchange to the benefit of all market participants that are able to interact with this Customer liquidity.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,[28] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[29] Likewise, in *NetCoalition* v. *Securities and Exchange Commission*[30] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[31] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[32]

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[18] *See* NOM Chapter XV, Section 2(6). NOM is, along with Phlx and BX Options Market of NASDA BX, Inc., one of three options markets under the umbrella of Nasdaq, Inc.

[19] *Id.* As discussed, however, NOM has three MARS Payment tiers.

[20] Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols.

[21] Category B rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of $0.14 per contract. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order for Simple PIXL Orders.

[22] Category C rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order are not paid a rebate under any circumstances. The Category C Rebate is paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order leg for Complex PIXL Orders.

[23] *See* Section B of the Pricing Schedule.

[24] The Exchange does not pay Customer Rebates on options overlying NDX and MNX.

[25] Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership means members or member organizations under 75% common ownership or control. *See* the Preface of the Pricing Schedule.

[26] SPY is included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program, however, the rebates do not apply to electronic executions in SPY. Additionally, the Exchange pays a $0.02 per contract Category A and B rebate and a $0.03 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II. *See* Section B of the Pricing Schedule.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(4), (5).

[29] Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) ("Regulation NMS Adopting Release").

[30] *NetCoalition* v. *SEC*, 615 F.3d 525 (D.C. Cir. 2010).

[31] *See id.* at 534–535.

[32] *See id.* at 537.

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."[33] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Change 1—New MARS Payment Tiers

In Change 1 the Exchange proposes to specify two tiers for MARS Payment. The Exchange also proposes to add a sentence that summarizes when MARS Payments will be paid. Today, Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of $0.10 per contract if they have routed at least 30,000 System Eligible Contracts. The Exchange proposes to make the current requirement into the Tier 2 $0.10 per contract MARS Payment; and proposes a new Tier 1 $0.01 per contract MARS Payment for Phlx members that bring a smaller number of Eligible Contracts, namely 1,000 daily contracts, to the Exchange. As discussed, the current 30,000 daily ADV and MARS Payment amount of $0.10 per contract is simply moved from the current MARS Payment standard to Tier 2. The Exchange believes that the proposed changes are reasonable, equitable and not unfairly discriminatory for the following reasons.

The Exchange proposes to expand MARS Payments by structuring a tiered system of payments. The proposed tiered MARS Payment system is reasonable because it will encourage additional Phlx members to participate in MARS and deliver an even greater amount of liquidity on the Exchange. The proposed change would allow qualifying MARS volume to receive a MARS Payment, at two different levels. With the proposed change, all Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment of $0.01 or $0.10 per contract. The Exchange believes that this is reasonable because it will incentivize more Phlx members to route Eligible Contracts for execution on the Exchange.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the increased ability to receive MARS Payment will be applied uniformly to all. In addition, any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System. Thus, a $0.01 per contract MARS Payment will be made pursuant to Tier 1 to those Phlx members that have System Eligibility and have executed at least 1,000 daily ADV contracts; and a $0.10 per contract MARS Payment will be made pursuant to Tier 2 to those Phlx members that have System Eligibility and have executed at least 30,000 ADV contracts. In each instance, the Eligible Contracts must be properly routed and executed on Phlx in order to get MARS Payment.

The proposed tiered MARS Payment for Phlx is reasonable because, as discussed, it is similar to the existing MARS Payment system on NOM.[34] Moreover, the Exchange believes that the proposed Tiers for MARS Payment are reasonable in that they reflect a structure that is not novel in the options markets but rather is similar to that of other options markets and competitive with what is offered by other exchanges.[35] In addition, the Exchange believes that making changes to add Tiers for MARS Payment is reasonable because it will attract more orders and liquidity to the Exchange. Activity that enhances liquidity on the Exchange benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that the proposed 1,000 contract and 30,000 contract ADV levels are reasonable because the Exchange is only counting volume from Firms, Broker-Dealers, JBOs and Professionals which are electronically delivered and executed. The Exchange believes that these numbers reflect an appropriate level of commitment from Phlx members to earn the MARS Payment. The Exchange believes that these levels are equitable and not unfairly discriminatory because they will be uniformly applied to all qualifying Phlx members.[36]

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to pay the proposed MARS Payment to Phlx members that have System Eligibility and have executed the Eligible Contracts, even when a different Phlx member may be liable for transaction charges resulting from the execution of the orders upon which the subsidy might be paid. The Exchange notes that this sort of arrangement already exists on the Exchange with respect to QCC rebates for floor QCC transactions and results in a situation where the floor broker is earning a rebate and one or more different Phlx members are potentially liable for the Exchange transaction charges applicable to QCC Orders.[37]

The Exchange also proposes to add a sentence that summarizes when MARS Payments will be paid. The added sentence is reasonable, equitable, and not unfairly discriminatory because it is simply a way to summarize, in one place, that a MARS Payment has to be properly routed and executed and has to add a certain amount of liquidity. The proposed summary sentence is similar to that of NOM.

The Exchange desires to continue to incentivize members and member organizations, through the Exchange's rebate and fee structure, to select Phlx as a venue for bringing liquidity and trading by offering competitive pricing. Such competitive, differentiated pricing exists today on other options exchanges. The Exchange's goal is creating and increasing incentives to attract orders to the Exchange that will, in turn, benefit all market participants through increased liquidity at the Exchange. The Exchange believes that the proposed change promotes the goal of creating and increasing incentives to attract liquidity.

Change 2—Customer Rebate Program

The Exchange's proposal to amend Section B to offer members and member organizations an additional $0.05 per contract Category C rebate in Tiers 2 and 3 provided the member or member organization qualified for a Tier 1 or 2 MARS Payment in Section IV, Part E is reasonable because it will encourage market participants to send a greater amount of Customer liquidity to Phlx. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Certain market participants will receive higher Tier 4 and 5 Category B rebates for transacting the same Customer order flow as today, while other market participants may become eligible for higher Customer Rebates in Section B of the Pricing Schedule.

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[33] *Id.* at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) at 73 FR at 74782–74783).

[34] *See* NOM Chapter XV, Section 2(6).

[35] *See* NOM Chapter XV, Section 2(6).

[36] Moreover, the proposed Tier 2 level of 30,000 or more contracts is reasonable because, as discussed, it is similar to the current MARS Payment threshold of at least 30,000 contracts in a month.

[37] With the QCC rebates applicable to transactions executed on the trading floor, the Exchange does not offer a front-end for order entry; unlike some of the competing exchanges, the Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing floor broker on a QCC Order. Also, all qualifying Phlx members would be uniformly paid the subsidy on all qualifying volume that was routed by them to the Exchange and executed.

The Exchange's proposal to amend Section B to offer members and member organizations an additional $0.05 per contract Category C rebate in Tiers 2 and 3 provided the member or member organization qualified for a Tier 1 or 2 MARS Payment in Section IV, Part E is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. All members are eligible to receive the rebate provided they submit a qualifying number of electronic Customer volume. In addition, any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System.

Additionally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay market participants different rebates for transacting Simple versus Complex Orders. Today, the Exchange pays different Category A (Simple Order) and Category B (Complex Order) rebates. The Exchange also differentiates pricing for Simple and Complex Orders transaction fees in Section I as do other options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange believes that its proposal to establish MARS Payment tiers will continue to encourage eligible market participants to transact orders on the Exchange in order to obtain MARS Payments.

The Exchange operates in a highly competitive market, comprised of fourteen options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

Change 1—Tiered MARS Payment

The Exchange believes that the proposal to amend MARS Payments to offer tiers will continue to encourage order flow to be directed to the Exchange. Certain market participants will receive $0.10 per contract Tier 2 MARS Payments for transacting the same order flow as today, while other market participants may become eligible for new lower $0.01 per contract Tier 1 MARS Payments for transacting a smaller amount of order flow. The Exchange believes that MARS Payments will continue to encourage order flow to be directed to the Exchange. Any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System. All Phlx members are eligible to qualify for a MARS Payments. By incentivizing members to route Eligible Contracts, the Exchange desires to attract liquidity to the Exchange, which in turn benefits all market participants.

The Exchange does not believe that this proposal will impose an undue burden on intra-market competition because it will be applied to all market participants in a uniform manner. All Phlx members are eligible to receive MARS Payments provided they submit a qualifying number of Eligible Contracts. In addition, any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System. The Exchange believes this pricing amendment does not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

Change 2—Customer Rebates

The Exchange believes that the Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. Certain market participants will receive higher Tier 4 and 5 Category B rebates for transacting the same Customer order flow as today, while other market participants may become eligible for higher Customer Rebates in Section B of the Pricing Schedule. The Exchange believes that the Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. By incentivizing members to route Customer orders, the Exchange desires to attract liquidity to the Exchange, which in turn benefits all market participants. All market participants are eligible to qualify for a Customer Rebate.

The Exchange does not believe that this proposal will impose an undue burden on intra-market competition because it will be applied to all market participants in a uniform matter. All members are eligible to receive the rebate provided they submit a qualifying number of electronic Customer volume. In addition, any Phlx member is permitted to apply for MARS, provided the requirements are met, including a robust and reliable System. The Exchange believes this pricing amendment does not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[38]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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[38] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR-Phlx–2016–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-Phlx–2016–69. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2016–69, and should be submitted on or before July 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15065 Filed 6–24–16; 8:45 am]

BILLING CODE 8011–01–P

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[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78117; File No. SR–NYSEMKT–2016–60]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Amex Options Fee Schedule

June 21, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 9, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Amex Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee change effective June 9, 2016. The proposed change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Sections I. E. and G. of the Fee Schedule[4] to adjust fees and credits payable, effective on June 9, 2016.

Proposed changes to ACE Program

Section I.E. of the Fee Schedule describes the Exchange's ACE Program, which features five tiers expressed as a percentage of total industry Customer equity and Exchange Traded Fund ("ETF") option average daily volume[5] and provides two alternative methods through which Order Flow Providers (each an "OFP") may receive per contract credits for Electronic Customer volume that the OFP, as agent, submits to the Exchange.

The Exchange proposes to modify the ACE Program by increasing certain of the credits available for Tiers 2 through 5 as illustrated in the table below, with proposed additions appearing underscored and proposed deletions appearing in brackets:

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Fee Schedule, Sections I. E. (Amex Customer Engagement ("ACE") Program—Standard Options) and G. (CUBE Auction Fees & Credits), *available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.*

[5] The volume thresholds are based on an NYSE Amex Options Market Makers' volume transacted Electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the "OCC"). Total industry Customer equity and ETF option volume is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying a security other than an equity or ETF security. *See* OCC Monthly Statistics Reports, *available here, http://www.theocc.com/webapps/monthly-volume-reports.*

	ACE Program—Standard Options			Credits Payable On Customer Volume Only		
Tier	Customer Electronic ADV as a % of Industry Customer Equity and ETF Options ADV	OR	Total Electronic ADV (of which 20% or greater of the minimum qualifying volume for each Tier must be Customer) as a % of Industry Customer Equity and ETF Options ADV	Customer Volume Credits	1 Year Enhanced Customer Volume Credits	3 Year Enhanced Customer Volume Credits
1	0.00% to 0.60%		N/A	$0.00	$0.00	$0.00
2	>0.60% to 0.80% or ≥0.35% over October 2015 volumes.		N/A	[(0.16] (0.18)	[(0.16)] (0.18)	[(0.16)] (0.18)
3	>0.80% to 1.25%		1.50% to 2.50% of which 20% or greater of 1.50% must be Customer.	[(0.17)] (0.19)	[(0.18)] (0.20)	[(0.19)] (0.21)
4	>1.25 to 1.75%		>2.50% to 3.50% of which 20% or greater of 2.50% must be Customer.	[(0.18)] (0.20)	[(0.19)] (0.21)	[(0.21)] (0.22)
5	>1.75%		>3.50% of which 20% or greater of 3.5% must be Customer.	[(0.19)] (0.22)	[(0.21)] (0.23)	[(0.23)] (0.24)

The proposed amendments to the ACE Program are designed to enhance the rebates, which the Exchange believes would attract more volume and liquidity to the Exchange to the benefit of Exchange participants through increased opportunities to trade as well as enhancing price discovery.

Proposed Changes to CUBE Pricing

Section I.G. of the Fee Schedule sets forth the rates for per contract fees and credits for executions associated with a CUBE Auction. The Exchange is proposing to adjust rates for RFR Response fees and Initiating Credits and Rebates. Specifically, the Exchange proposes to adjust RFR Response fees for Non-Customers to $0.50 for symbols in the Penny Pilot, from $0.12; and to adjust RFR Response fees for Non-Customers for symbols not in the Penny Pilot to $1.05, from $0.12. The Exchange also proposes to adjust the Initiating Participant credits and rebates to $0.30 for symbols in the Penny Pilot, $0.70 for symbols not in the Penny Pilot, an increase from the $0.05 Initiating Participant credit in all names. The Exchange also proposes to increase the ACE Initiating Participant Rebate from $0.05 to $0.12.

The proposed changes are designed to increase incentives for submission of CUBE Orders, which should maximize price improvement opportunities for Customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed amendments to the ACE Program are reasonable, equitable and not unfairly discriminatory because they would enhance the incentives to Order Flow Providers to transact Customer orders on the Exchange, which would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the ACE Program. Additionally, the Exchange believes the proposed changes to the ACE Program are consistent with the Act because they may attract greater volume and liquidity to the Exchange, which would benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

The Exchange believes that the proposed changes to CUBE Auction fees are reasonable, equitable and not unfairly discriminatory. Specifically, the proposed increases to both the Initiating Participant Credits (for both Penny Pilot and Non-Penny Pilot) as well as the fees associated with RFR Responses that participate in the CUBE are reasonable, equitable and non-discriminatory because they apply equally to all ATP Holders that choose to participate in the CUBE, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange believes the proposed changes to CUBE are reasonable, as they are similar to fees charged for similar auction mechanisms on other markets, such as BOX Options Exchange LLC ("BOX"), which charges a total fee of $1.05 for a Market Maker response to a PIP auction in a non-Penny Pilot issue.[8] Similarly, the Exchange also notes that the proposed change to charge $0.50 for RFR Responses in Penny Pilot Issues is consistent with, or lower than, rates charged by competing option exchanges, including BOX (charging total response fee of $0.65 to market makers and $0.72 to all other participants); NASDAQ PHLX ("PHLX") (charging a total response fee of $0.55 to market makers and $0.48 for all other participants) and Miami International Securities Exchange, Inc. ("MIAX") (charging response fee of $0.50 to market participants).[9]

The Exchange likewise believes the proposed increase of the ACE Initiating Participant Credit is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the ACE Initiating Participant Rebate is based on the amount of business transacted on the Exchange and is designed to attract more volume and liquidity to the Exchange generally, and to CUBE Auctions specifically, which would benefit all market participants (including those that do not participate in the ACE Program) through increased opportunities to trade at potentially improved prices as well as enhancing price discovery. Furthermore, the Exchange notes that the ACE Initiating Participant Rebate is equitable and not unfairly discriminatory because it would continue to incent ATP Holders to transact Customer orders on the Exchange and an increase in Customer order flow would bring greater volume and liquidity to the Exchange. Increased volume to the Exchange benefits all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the ACE Program.

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* BOX Fee Schedule, *available here, http://boxexchange.com/assets/BOX_Fee_Schedule.pdf.*

[9] *See* BOX Fee Schedule, at *id.;* PHLX fee schedule, *available here, http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing;* and MIAX fee schedule, *available here, https://www.miaxoptions.com/content/fees.*

Finally, the Exchange believes the proposed changes are consistent with the Act because to the extent the modifications permit the Exchange to continue to attract greater volume and liquidity, the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed amendments to the ACE Program are pro-competitive as the proposed increased rebates may encourage OFPs to direct Customer order flow to the Exchange and any resulting increase in volume and liquidity to the Exchange would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery. Further, the Exchange believes the proposed amendments to CUBE Auction pricing are pro-competitive as the fees and credits are designed to incent increases in the number of CUBE Auctions brought to the Exchange, which would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–60, and should be submitted on or before July 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15066 Filed 6–24–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78108; File No. SR–NYSE–2016–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Adopt a Fee Waiver and a Fee Cap Related to the Liquidity Provider Incentive Program on the NYSE Bonds℠ System

June 21, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 7,

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[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to adopt a fee waiver and a fee cap related to the Liquidity Provider Incentive Program on the NYSE Bonds^{SM} system. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to adopt a fee waiver and a fee cap related to the Liquidity Provider Incentive Program on the NYSE Bonds system recently implemented by the Exchange.[4] Pursuant to the Liquidity Provider Incentive Program, a voluntary rebate program, the Exchange pays Users[5] of NYSE Bonds a monthly rebate provided Users who opt into the rebate program meet specified quoting requirements. Under the program, the rebate payable is based on the number of CUSIPs[6] a User quotes. The rebate amount is tiered based on the number of CUSIPs quoted by a User, as follows:

LIQUIDITY PROVIDER INCENTIVE PROGRAM

Number of CUSIPs	Monthly rebate
400–599	$10,000
600–799	20,000
800 or more	30,000

To qualify for a rebate, a User is required to provide continuous two-sided quotes for at least eighty percent (80%) of the time during the Core Bond Trading Session for an entire calendar month.[7] The Exchange calculates each participating User's quoting performance beginning each month on a daily basis, up to and including the last trading day of a calendar month, to determine at the end of each month each User's monthly average. Under the program, Users must provide a two-sided quote for a minimum of hundred (100) bonds per side of the market with an average spread of half-point ($0.50) or less in CUSIPs whose average maturity is at least five (5) years as of the date the User provides a quote. In order for a CUSIP to qualify for inclusion in the rebate calculation, a User must provide continuous two-sided quotes in a CUSIP, whether it's for eighty percent (80%) or fifty percent (50%) of the time, as applicable, for a minimum of hundred (100) bonds per side of the market that has an average spread of half-point ($0.50) or less and whose average maturity is at least five (5) years as of the date the User provides the quote.

Users that opt in to the Liquidity Provider Incentive Program are subject to a transaction fee for orders that provide liquidity to the NYSE Bonds Book of $0.50 per bond.[8] In order to further incentivize Users to provide liquidity on the NYSE Bonds system, the Exchange proposes to adopt a fee waiver and a fee cap. As proposed, the fee waiver would apply to Users that provide liquidity in 800 or more qualifying CUSIPs quoted on the NYSE Bonds Book. Additionally, the Exchange proposes to adopt a fee cap of $5,000 per month that would apply to all Users that do not attain the fee waiver, *i.e.*, Users that provide liquidity in the 400–599 qualifying CUSIP tier and in the 600–799 qualifying CUSIP tier. The Exchange is not proposing any change to the level of fees or rebates applicable to the Liquidity Provider Incentive Program. The proposed rule change is intended to provide Users with a greater incentive to provide liquidity on the NYSE Bonds system.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to the Liquidity Provider Incentive Program are reasonable and equitable as they are intended to further incentivize Users to provide liquidity to the NYSE Bonds system. The proposed fee waiver for Users that provide liquidity in 800 or more qualifying CUSIPs and the proposed fee cap for Users that provide liquidity in the 400–599 qualifying CUSIP tier and in the 600–799 qualifying CUSIP tier, are both reasonable amendments to the Exchange's fee schedule and do not unfairly discriminate between customers, issuers, and brokers or dealers because all member organizations that opt in to the Liquidity Provider Incentive Program would benefit from the proposed fee changes. The Exchange believes that the proposed fee changes are also reasonable because they are designed to provide an incentive for member organizations to increase displayed liquidity at the Exchange, thereby increasing traded volume.

The Exchange is proposing to adopt a pricing model whereby Users providing liquidity in a minimum number of qualifying CUSIPs to the NYSE Bonds system would not pay a fee, and Users that do not qualify for the fee waiver would benefit by the proposed fee cap. The proposed rule change will therefore benefit all Users that provide liquidity to the NYSE Bonds system.

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[4] *See* Securities Exchange Act Release Nos. 77591 (April 12, 2016), 81 FR 22656 (April 18, 2016) (SR–NYSE–2016–26); and 77812 (May 11, 2016), 81 FR 30594 (May 17, 2016) (Sr-NYSE–2016–34).

[5] Rule 86(b)(2)(M) [sic] defines a User as any Member or Member Organization, Sponsored Participant, or Authorized Trader that is authorized to access NYSE Bonds.

[6] CUSIP stands for Committee on Uniform Securities Identification Procedures. A CUSIP number identifies most financial instruments, including: stocks of all registered U.S. and Canadian companies, commercial paper, and U.S. government and municipal bonds. The CUSIP system—owned by the American Bankers Association and managed by Standard & Poor's—facilitates the clearance and settlement process of securities. *See http://www.sec.gov/answers/cusip.htm.*

[7] For the first calendar month after a User opts in, the User is required to provide continuous two-sided quotes for fifty percent (50%) of the time during the Core Bond Trading Session.

[8] For orders that take liquidity from the NYSE Bonds Book, the current tiered fees apply, *i.e.*, $0.50 per bond for executions of one to 10 bonds, $0.20 per bond for executions of 11 to 25 bonds and $0.10 per bond for executions of 26 bonds or more, with a maximum fee of $100 per execution. Users that do not opt in to the Liquidity Provider Incentive Program are subject to the Exchange's standard fees and rebates, as currently provided on the Price List.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4), (5).

The Exchange further believes that the proposed rule change is equitable and not unfairly discriminatory in that it will apply uniformly to all Users accessing the NYSE Bonds system. Each User will have the ability to determine the extent to which the Exchange's proposed structure will provide it with an economic incentive to use the NYSE Bonds system, and model its business accordingly.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Debt securities typically trade in a decentralized OTC dealer market that is less liquid and transparent than the equities markets. The Exchange believes that the proposed change would increase competition with these OTC venues by creating additional incentives to engage in bonds transactions on the Exchange and rewarding market participants for actively quoting and providing liquidity in the only transparent bond market, which the Exchange believes will enhance market quality.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues that are not transparent. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges as well as with alternative trading systems and other venues that are not required to comply with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed change will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(2) of Rule 19b–4[13] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–42, and should be submitted on or before July 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15072 Filed 6–24–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78111; File No. SR–BatsBZX–2016–24]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

June 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BZX Rules 15.1(a) and (c) ("Fee Schedule") to: (i) Add fee codes NA and NB; and (ii) increase the standard rebate for orders that yield fee code B.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) Add fee codes NA and NB; and (ii) increase the standard rebate for orders that yield fee code B.

Fee Codes NA and NB

The Exchange previously filed a proposed rule change with the Commission to identify Non-Displayed Orders[6] as such when routed to an away Trading Center.[7] The Exchange intends to implement this functionality on June 1, 2016.[8] Because other Trading Centers typically provide different rebates or fees with respect to non-displayed liquidity the Exchange proposes to amend its Fee Schedule to add fee codes NA and NB, which would apply to routed Non-Displayed Orders. Proposed fee code NA would be applied to Non-Displayed Orders that are routed to and add liquidity on Bats EDGX Exchange, Inc. ("EDGX"), the New York Stock Exchange, Inc. ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE MKT LLC ("NYSE MKT"), or the Nasdaq Stock Market LLC ("Nasdaq").[9] Orders that yield fee code NA would not be charged a fee nor receive a rebate in both securities priced at or above $1.00 or below $1.00. Proposed fee code NB would be applied to Non-Displayed Orders that are routed to and add liquidity on any exchange not listed in proposed fee code NA. Orders that yield fee code NB would be charged a fee of $0.0030 per share in securities priced at or above $1.00 and 0.30% of the trade's total dollar value in securities priced below $1.00.

Fee Code B

Fee code B is appended to orders that provide liquidity in Tape B securities on the Exchange. Such orders that yield fee code B currently receive a standard rebate of $0.0020 per share. The Exchange proposes to increase this standard rebate applied to orders yielding fee code B to $0.0025 per share. The Exchange believes the increased rebate would incentivize the provision of displayed liquidity in Tape B securities on the Exchange.

The Exchange also currently provides two Tape B Volume and Quoting Tiers pursuant to footnote 13 that provide additional step-up rebates based on a member's Tape B ADAV[10] as a percentage of TCV.[11] The "Tape B Volume Tier" provides a step-up rebate of $0.0027 per share if a Member's Tape B ADAV as a percentage of TCV is equal to or greater than 0.08%. This tier will remain unchanged. "Tier 1" currently provides a step-up rebate of $0.0025 per share if a Member's Tape B ADAV as a percentage of TCV is equal to or greater than 0.05%. Because the Exchange proposes to increase of the standard rebate applicable to orders that yield fee code B to $0.0025 per share, the Exchange proposes to eliminate Tier 1 in its entirety as tier's criteria would now be unnecessary to achieve the increased rebate.

Finally, the Exchange proposes to update its Standard Rate table to include the proposed $0.0025 rebate with respect to pricing for adding liquidity for securities at or above $1.00.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule effective immediately.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rebate increase is equitable and non-discriminatory in that it would apply uniformly to all Members. The Exchange believes the rates remain competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

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[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] *See* Exchange Rule 11.9(c)(11).

[7] The Exchange notes that the Exchange also amended its rules to route Reserve Orders (as defined in Rule 11.9(c)(1)) as such to other Trading Centers. *See* Securities Exchange Act 77187 (February 19, 2016), 81 FR 9556 (February 25, 2016) (SR–BYX–2016–04). Non-Displayed Orders and Reserve Orders would be handled in accordance with the rules of the Trading Center to which they are routed. *Id.* This proposal does not impact the routing of Reserve Orders.

[8] *See Bats Announces Support for Hidden Post-to-Away Routed Orders, available at http://cdn.batstrading.com/resources/release_notes/2016/Bats-Announces-Support-for-Hidden-Post-to-Away-Routed-Orders.pdf.*

[9] Today, all orders that are routed to post to an away market are routed for display on such market and receive the following rates: (i) Rebate of $0.0015 per share for orders routed to the NYSE; (ii) rebate of $0.0021 per share for Tapes A and C securities and a rebate of $0.0022 per share for Tape B securities for orders routed to NYSE Arca; (iii) rebate of $0.0015 per share for orders routed to NYSE MKT; (iv) rebate of $0.0015 per share for orders routed to Nasdaq; and (v) a rebate of $0.0020 per share for orders routed to EDGX. *See* the Exchange's Fee Schedule *available at http://batstrading.com/support/fee_schedule/bzx/.* These rates generally represent a pass through of the rate that Bats Trading, Inc. ("Bats Trading"), the Exchange's affiliated routing broker-dealer, is provided for adding displayed liquidity at NYSE, NYSE Arca, NYSE MKT, Nasdaq, or EDGX when it does not qualify for a volume tiered reduced fee or enhanced rebate.

[10] As provided in the Fee Schedule, "ADAV" means average daily added volume calculated as the number of shares added per day.

[11] As provided in the Fee Schedule, "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[12] The Exchange initially filed the proposed fee change on May 31, 2016 (SR-BatsBZX–2016–21). On June 8, 2016, the Exchange withdrew SR-BatsBZX–2016–21 and submitted this filing.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

In particular, the Exchange believes that proposed fee codes NA and NB represent an equitable allocation of reasonable dues, fees, and other charges. The proposed fees are similar to and based on the fees and rebates assessed or provided to Bats Trading when routing to away Trading Centers. For instance, like proposed fee code NA, the NYSE, NYSE Arca, and Nasdaq charge no fee nor provide a rebate for non-displayed orders that add liquidity.[15] In addition, the exchanges that would be covered by proposed fee code NB charge a fee of up to $0.0030 per share to add liquidity.[16] In addition, the proposed rate for fee code NB is equal to or greater than similar routing fees charged by other exchanges. For example, the NYSE, NYSE MKT, and Nasdaq charge a fee of $0.0030 per share and NYSE Arca charges a fee of $0.0035 per share regardless of which destination the order is routed.[17]

The Exchange notes that routing through Bats Trading is voluntary. The Exchange is providing a service to allow Members to post Non-Displayed Orders to these destinations and that those Members seeking to post such orders to away destinations may connect to those destinations directly and be charged the fee or provided the rebate from that destination. Therefore, the Exchange believes the rates for proposed fee codes NA and NB are equitable and reasonable because they are related to the rates provided by the away exchange and reasonably account for the routing service provided for by the Exchange. Lastly, the Exchange believes that the proposed amendments are non-discriminatory because it applies uniformly to all Members and that the proposed rates are directly related to rates provided by the destinations to which the orders may be routed.

The Exchange believes the increased rebate for orders adding liquidity yielding Fee Code B is a reasonable means to encourage Members to increase their liquidity on the Exchange in Tape B securities. The Exchange further believes that the rebate increase is an equitable and non-discriminatory allocation of reasonable dues, fees, and other charges because the increased rebate encourages Members to add increased liquidity to the BZX Book[18] in Tape B securities and is applicable equally to all Members. The increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. For example, routing through Bats Trading is voluntary and Members seeking to post such orders to away destinations may connect to those destinations directly and be charged the fee or provide the rebate from that destination. The Exchange does not believe that the increased rebate applicable to orders yielding Fee Code B would burden competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional liquidity to the Exchange. The Exchange does not believe the increased rebate would burden intramarket competition as it would apply to all Members uniformly. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and paragraph (f) of Rule 19b–4 thereunder.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR-BatsBZX–2016–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-BatsBZX–2016–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

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[15] *See* the NYSE fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf* (dated May 23, 2016); the NYSE Arca fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (dated May 23, 2016); *and* the Nasdaq fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*. The Exchange notes that NYSE MKT and EDGX provide a rebate of $0.0016 and $ 0.0015 per share respectively for non-displayed orders that add liquidity. *See* the NYSE MKT fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/NYSE_MKT_Equities_Price_List.pdf* (dated May 23, 2016); *and* the EDGX fee schedule *available at http://batstrading.com/support/fee_schedule/edgx/*.

[16] *See* the Bats EDGA Exchange, Inc. fee schedule *available at http://batstrading.com/support/fee_schedule/edga/;* and the Nasdaq BX, Inc. fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing*. The Exchange notes that it currently does not provide for routing orders to post on the Chicago Stock Exchange, Inc. or the National Stock Exchange, Inc.

[17] *See supra* note 15. Nasdaq charges a fee of $0.0035 per share for routed orders that are directed to another market. *See* the Nasdaq fee schedule *at id.*

[18] *See* Exchange Rule 1.5(e).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsBZX–2016–24, and should be submitted on or before July 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15075 Filed 6–24–16; 8:45 am]

BILLING CODE 8011–01–P

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Coastal Pacific Mining Corp. and Petaquilla Minerals Ltd.; Order of Suspension of Trading

June 23, 2016.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of Coastal Pacific Mining Corp. ("CPMCF" [1]) (CIK No. 1410181), an Alberta corporation located in Calgary, Alberta, Canada with a class of securities registered with the Commission pursuant to Securities Exchange Act of 1934 ("Exchange Act") Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20–F for the period ended April 30, 2012. On March 19, 2015, the Commission's Division of Corporation Finance ("Corporation Finance") sent a delinquency letter to CPMCF requesting compliance with its periodic filing requirements but CPMCF did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of June 16, 2016, the common stock of CPMCF was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Petaquilla Minerals Ltd. ("PTQMF") (CIK No. 947121), a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20–F for the period ended June 30, 2013. On September 30, 2015, Corporation Finance sent a delinquency letter to PTQMF requesting compliance with its periodic filing requirements but PTQMF did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of June 16, 2016, the common shares of PTQMF were quoted on OTC Link, had six market makers, and were eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 23, 2016, through 11:59 p.m. EDT on July 7, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–15255 Filed 6–23–16; 4:15 pm]

BILLING CODE 8011–01–P

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[1] The short form of each issuer's name is also its stock symbol.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78109; File No. SR–CHX–2016–08]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fingerprinting

June 21, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 9, 2016, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CHX. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend the Rules of the Exchange ("CHX Rules") to update provisions regarding the fingerprinting of securities industry personnel associated with Participants.[5]

CHX has designated this proposed rule change as non-controversial pursuant to section 19(b)(3)(A) [6] of the Act and Rule 19b–4(f)(6) [7] thereunder and has provided the Commission with the notice required by Rule 19b–4(f)(6)(iii).[8]

The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and StatutoryBasis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes [sic] and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] A "Participant" is a "member" of the Exchange for purposes of the Act. *See* CHX Article 1, Rule 1(s).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and StatutoryBasis for, the Proposed Rule Changes

1. Purpose

The Exchange proposes to amend Article 6, Rule 10 regarding the fingerprinting of security industry personnel. Current Article 6, Rule 10 provides that each Participant and Participant Firm is responsible for ensuring compliance with section 17(f) of the Exchange Act[9] and SEC Rule 17f–2[10] regarding the fingerprinting of securities industry personnel. Thereunder, paragraph .01 of the Interpretations and Policies of Article 6, Rule 10 provides that Participants may submit fingerprint cards to the Exchange for processing.[11] Paragraph .02 of the Interpretations and Policies of Article 6, Rule 10 provides that the Exchange shall submit fingerprint cards obtained pursuant to this rule to the Attorney General of the United States or his or her designee for identification and processing and that the Exchange shall maintain the security of fingerprint cards and information received from the Attorney General or his or her designee.

The Exchange proposes to eliminate the reference to "Participant Firm," as the definition of "Participant" includes Participant Firms[12] and replace the reference to "SEC Rule 17f-2" with "Rule 17f–2 under the Exchange Act," which is stylistically consistent with other citations to various rules under the Exchange Act throughout the CHX Rules.[13]

Moreover, as the Exchange no longer permits Participants to submit fingerprints to the Exchange directly,[14] the Exchange proposes to delete paragraphs .01 and .02 of the Interpretations and Policies of Article 6, Rule 10 and adopt language under amended Article 6, Rule 10 that provides that each Participant shall submit the fingerprints of its associated persons to the FINRA Web CRD prior to such personnel performing the functions listed under Rule 17f–2 under the Exchange Act. Thus, the proposed rule change serves to clean up provisions that should have been amended at the time the Exchange filed SR–CHX–2011–19.[15]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[16] in general and furthers the objectives of sections 6(b)(1)[17] in particular, in that it further enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Participants and persons associated with its Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, in furtherance of the objectives of section 6(b)(1). Specifically, the Exchange believes that the proposed rule change serves to clean up provisions that should have been amended at the time the Exchange filed SR–CHX–2011–19,[18] which furthers the objectives of section 6(b)(1).

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change serves to clarify that the Exchange no longer accepts fingerprint submissions from Participants, which does not implicate competitive issues.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange states that the proposed change cleans up provisions that should have been amended at the time the Exchange filed SR–CHX–2011–19.[21] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The rule change removes outdated rule text regarding the Exchange submitting fingerprint cards and amends Rule 10 to state that fingerprints must be submitted via Web CRD. Waiver of the operative delay will permit CHX to implement the change, which aligns its rules with its practice, without delay. Therefore, the Commission designates the proposed rule change to be operative upon filing.[22]

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[9] 15 U.S.C. 78q(f).

[10] 17 CFR 240.17f–2.

[11] While the Exchange is currently permitted to require Participants to submit fingerprints to either the Exchange or to the Financial Industry Regulatory Authority ("FINRA") Web Central Registration Depository ("Web CRD"), in 2011, the Exchange eliminated, among other things, fees for fingerprint processing by the Exchange and noted that the Exchange no longer provided fingerprint processing services. *See* Exchange Act Release No. 64953 (July 25, 2011), 76 FR 45626 (July 29, 2011) (SR–CHX–2011–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify the Application of the Fee Schedule to Certain Transactions of, and Services to, CHX Participants and Make Certain Rate Changes); *see also* Exchange Act Release No. 57587 (March 31, 2008), 73 FR 18598 (April 4, 2008) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rules Relating to Registration Requirements); *see also* Exchange Act Release No. 57363 (February 20, 2008), 73 FR 10846 (February 28, 2008) (SR–CHX–2007–21) (Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rules Relating to Registration Requirements).

The CRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker dealers.

For those Participants that are not FINRA members, the Exchange collects the appropriate Web CRD fees from such Participants on behalf of FINRA. *See* CHX Fee Schedule Section J.5. Participants that are also FINRA members are subject to the relevant fingerprint processing fees under the FINRA Registration/Exam Fee Schedule.

[12] *See supra* note 5.

[13] *See e.g.,* CHX Article 7, Rule 8(a); *see also e.g.,* CHX Article 12, Rule 8(a).

[14] *See supra* note 11.

[15] *See supra* note 11.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(1).

[18] *See supra* note 11.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[21] *See supra* note 11.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CHX–2016–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CHX–2016–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2016–08 and should be submitted on or before July 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–15073 Filed 6–24–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Request for Transit Advisory Committee for Safety (TRACS) Nominations

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice to solicit TRACS nominees.

SUMMARY: The Federal Transit Administration (FTA) is seeking nominations for individuals to serve as members for two-year terms on the Transit Advisory Committee for Safety (TRACS). TRACS provides information, advice, and recommendations to the U.S. Secretary of Transportation (Secretary) and FTA Administrator in response to tasks assigned to the committee. TRACS does not exercise program management responsibilities and makes no decisions directly affecting the programs on which it provides advice. The Secretary may accept or reject a recommendation made by TRACS and is not bound to pursue any recommendation from TRACS.

DATES: FTA is asking for all Nominations to be submitted by August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Adrianne Malasky, Office of Transit Safety and Oversight, Federal Transit Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 (telephone: 202–366–5496; or email: *Adrianne.Malasky@dot.gov*).

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 2009, the TRACS was originally chartered by the Secretary for the purpose of providing a forum for the development, consideration, and communication of information from knowledgeable and independent perspectives regarding modes of public transit safety. The TRACS consists of members representing key constituencies affected by transit safety requirements, including transit rail and bus safety experts, research institutions, industry associations, labor unions, transit agencies, and State Safety Oversight Agencies. TRACS currently has 29 members, which is the maximum number of members.

Pursuant to the mandates at 49 U.S.C. 5329, the FTA is required to develop an implement a national public transportation safety program to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. chapter 53. Therefore, TRACS membership is configured to reflect a broad range of safety constituents representative of the public transportation industry and include key constituencies affected by safety requirements for transit rail and/or transit bus. Individuals representing labor unions, rail and bus transit agencies, paratransit service providers (both general public and Americans with Disabilities Act complementary service), State Safety Oversight Agencies, State Departments of Transportation, transit safety research organizations and the rail and bus transit safety industry are invited to apply for membership.

The TRACS meets twice a year, usually in Washington, DC, but may meet more frequently or via conference call as needed. Members serve at their own expense and receive no salary from the Federal Government. The FTA retains authority to review the participation of any TRACS member and to recommend changes at any time. TRACS meetings are open to all members of the public. Interested parties may view information about the committee at: *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs.*

II. Nominations

The FTA invites qualified individuals interested in serving on this committee to apply to FTA for appointment. FTA's Administrator will recommend nominees for appointment by the Secretary. Appointments are for two-year terms; however, the Secretary may reappoint a member to serve additional terms. Nominees should be knowledgeable of trends or issues related to rail transit and bus transit

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proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

safety. Along with their experience in the bus transit or rail transit industry, nominees will also be evaluated on factors including leadership and organizational skills, region of the country represented, diversity characteristics, and the overall balance of industry representation.

Each nomination should include the nominee's name and organizational affiliation, a cover letter describing the nominee's qualifications and interest in serving on the committee, a curriculum vitae or resume of the nominee's qualifications, and contact information including the nominee's name, address, phone number, fax number, and email address. Self-nominations are acceptable. FTA prefers electronic submissions for all applications to *TRACS@dot.gov.* Applications will also be accepted via U.S. mail at the address identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

In the near-term, the FTA expects to nominate up to twenty (20) representatives from the public transportation safety community for immediate TRACS membership. Interested persons must submit their nomination applications to FTA by August 31, 2016. The Secretary, in consultation with the FTA Administrator, will make the final selection decision.

Issued this 17 day of June, 2016, in Washington, DC.

Carolyn Flowers,

Acting Administrator.

[FR Doc. 2016–15110 Filed 6–24–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2016–0065]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Request for public comment on an extension of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before August 26, 2016.

ADDRESSES: You may submit comments using any of the following methods. All comments must have the applicable DOT docket number (*e.g.,* NHTSA–2016–0065) noted conspicuously on them.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Alex Ansley, Recall Management Division (NVS–215), Room W48–301, NHTSA, 1200 New Jersey Ave., Washington, DC 20590. Telephone: (202) 493–0481.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation, *see* 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Defect and Noncompliance Reporting and Notification.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2127–0004.

Affected Public: Businesses or individuals.

Abstract: This notice requests comment on NHTSA's proposed extension to approved collection of information OMB No. 2127–0004. This collection covers the information collection requirements found within various statutory sections in the Motor Vehicle Safety Act of 1966 (Act), 49 U.S.C. 30101, *et seq.,* that address and require manufacturer notifications to NHTSA of safety-related defects and failures to comply with Federal Motor Vehicle Safety Standards (FMVSS) in motor vehicles and motor vehicle equipment, as well as the provision of particular information related to the ensuing owner and dealers notifications and free remedy campaigns that follow those notifications. The sections of the Act imposing these requirements include 49 U.S.C. 30118, 30119, 30120, and 30166. Many of these requirements are implemented through, and addressed with more specificity in, 49

CFR part 573, *Defect and Noncompliance Responsibility and Reports* (Part 573) and 49 CFR part 577, *Defect and Noncompliance Notification.*

Pursuant to the Act, motor vehicle and motor vehicle equipment manufacturers are obligated to notify, and then provide various information and documents, to NHTSA in the event a safety defect or noncompliance with Federal Motor Vehicle Safety Standards (FMVSS) is identified in products they manufactured. *See* 49 U.S.C. 30118(b) and 49 CFR 573.6 (requiring manufacturers to notify NHTSA, and provide certain information, when they learn of a safety defect or noncompliance). Manufacturers are further required to notify owners, purchasers, dealers and distributors about the safety defect or noncompliance. *See* 49 U.S.C. 30118(b), 30120(a), and 49 CFR 577.7, 577.13. They are required to provide to NHTSA copies of communications pertaining to recall campaigns that they issue to owners, purchasers, dealers, and distributors. *See* 49 U.S.C. 30166(f) and 49 CFR 573.6(c)(10).

Manufacturers are also required to file with NHTSA a plan explaining how they intend to reimburse owners and purchasers who paid to have their products remedied before being notified of the safety defect or noncompliance, and explain that plan in the notifications they issue to owners and purchasers about the safety defect or noncompliance. *See* 49 U.S.C. 30120(d) and 49 CFR 573.13. They are further required to keep lists of the respective owners, purchasers, dealers, distributors, lessors, and lessees of the products determined to be defective or noncompliant and involved in a recall campaign, and are required to provide NHTSA with a minimum of six quarterly reports reporting on the progress of their recall campaigns. *See* 49 CFR 573.8 and 573.7, respectively.

The Act and Part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns. These requirements relate to the proper disposal of recalled tires, including a requirement that the manufacturer conducting the tire recall submit a plan and provide specific instructions to certain persons (such as dealers and distributors) addressing that disposal, and a requirement that those persons report back to the manufacturer certain deviations from the plan. *See* 49 U.S.C. 30120(d) and 49 CFR 573.6(c)(9). They also require the reporting to NHTSA of intentional and knowing sales or leases of defective or noncompliant tires.

49 U.S.C. 30166(n), and its implementing regulation found at 49 CFR 573.10, mandates that anyone who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire that is not compliant with FMVSS, and with actual knowledge that the tire manufacturer has notified its dealers of the defect or noncompliance as required under the Act, is required to report that sale or lease to NHTSA no more than five working days after the person to whom the tire was sold or leased takes possession of it.

Estimated Burden: The approved information collection associated with 49 CFR part 573 and portions of 49 CFR part 577 presently holds an estimated annual burden of 46,138 hours associated with an estimated 280 respondents per year. For information concerning how we calculated these estimates please see the **Federal Register** Notices 78 FR 51381 (August 20, 2013).

Our prior estimates of the number of manufacturers each year that would be required to provide information under 49 CFR part 573, the number of recalls for which 49 CFR part 573 information collection requirements would need to be met, and the number of burden hours associated with the requirements currently covered by this information collection require adjustment as explained below.

Based on current information, we now estimate 275 distinct manufacturers filing an average of 854 Part 573 Safety Recall Reports each year. This is a change from our previous estimate of 680 Part 573 Safety Recall Reports filed by 280 manufacturers each year.

We continue to estimate that it takes a manufacturer an average of 4 hours to complete each notification report to NHTSA and that maintenance of the required owner, purchaser, dealer, and distributors lists requires 8 hours a year per manufacturer. Accordingly, the subtotal estimate of annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance and maintenance of owner and purchaser lists is 5,616 hours annually ((854 notices × 4 hours/report) + (275 MFRs × 8 hours)).

In addition, we continue to estimate an additional 2 hours will be needed to add to a manufacturer's Part 573 Safety Recall Report details relating to the intended schedule for notifying its dealers and distributors, and tailoring its notifications to dealers and distributors in accordance with the requirements of 49 CFR 577.13. This would total to an estimated 1,708 hours annually (854 notices × 2 hours/report).

49 U.S.C. 30166(f) requires vehicle manufacturers to provide to the Agency copies of all communications regarding defects and noncompliances sent to owners, purchasers, and dealerships. Manufactures must index these communications by the year, make, and model of the vehicle as well as provide a concise summary of the subject of the communication. We estimate this burden requires 30 minutes for each vehicle recall. This would total to an estimated 380 hours annually (760 vehicle recalls × .5 hours).

In the event a manufacturer supplied the defect or noncompliant product to independent dealers through independent distributors, that manufacturer is required to include in its notifications to those distributors an instruction that the distributors are to then provide copies of the manufacturer's notification of the defect or noncompliance to all known distributors or retail outlets further down the distribution chain within five working days. *See* 49 CFR 577.7(c)(2)(iv). As a practical matter, this requirement would only apply to equipment manufacturers since vehicle manufacturers generally sell and lease vehicles through a dealer network, and not through independent distributors. We believe our previous estimate of roughly 80 equipment recalls per year needs to be adjusted to 95 equipment recalls per year to better reflect recent recall figures. Although the distributors are not technically under any regulatory requirement to follow that instruction, we expect that they will, and have estimated the burden associated with these notifications (identifying retail outlets, making copies of the manufacturer's notice, and mailing) to be 5 hours per recall campaign. Assuming an average of 3 distributors per equipment item, (which is a liberal estimate given that many equipment manufacturers do not use independent distributors) the total number of burden hours associated with this third party notification burden is approximately 1,425 hours per year (95 recalls × 3 distributors × 5 hours).

As for the burden linked with a manufacturer's preparation of and notification concerning its reimbursement for pre-notification remedies, we continue to estimate that preparing a plan for reimbursement takes approximately 8 hours annually, and that an additional 2 hours per year is spent tailoring the plan to particular defect and noncompliance notifications to NHTSA and adding tailored language about the plan to a particular safety recall's owner notification letters. In sum, these required activities add an additional 3,908 annual burden hours ((275 manufacturers × 8 hours) + (854 recalls × 2 hours)).

The Safety Act and 49 CFR part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns, as well as a statutory and regulatory reporting requirement that anyone who knowingly and intentionally sells or leases a defective or noncompliant tire notify NHTSA of that activity.

Manufacturers are required to include specific information related to tire disposal in the notifications they provide NHTSA concerning identification of a safety defect or noncompliance with FMVSS in their tires, as well as in the notifications they issue to their dealers or other tire outlets participating in the recall campaign. *See* 49 CFR 573.6(c)(9). We now estimate that the Agency administers 12 tire recalls each year, on average, revised down from our previous estimate of 15 tire recall each year. We estimate that the inclusion of this additional information will require an additional two hours of effort beyond the subtotal above associated with non-tire recall campaigns. This additional effort consists of one hour for the NHTSA notification and one hour for the dealer notification for a total of 24 burden hours (12 tire recalls a year × 2 hours per recall).

Manufacturer owned or controlled dealers are required to notify the manufacturer and provide certain information should they deviate from the manufacturer's disposal plan. Consistent with our previous analysis, we continue to ascribe zero burden hours to this requirement since to date no such reports have been provided and our original expectation that dealers would comply with manufacturers' plans has proven true.

Accordingly, we estimate 24 burden hours a year will be spent complying with the tire recall campaign requirements found in 49 CFR 573.6(c)(9).

Additionally, because the agency has yet to receive a single report of a defective or noncompliant tire being intentionally sold or leased, our previous estimate of zero burden hours remains unchanged with this notice.

The previous clearance for this information collection allowed for start-up costs for the Agency's VIN Look-up system and a new regulation that required manufacturers to create a VIN Look-up service on their respective Web sites. As these systems were launched successfully in August 2014, the start-up estimates for costs and burden will now be removed. The estimated costs to industry for one-time infrastructure expenses to create a VIN-based recalls lookup service consisting of 108 hours, and costing a total of $45,000, will now be removed from this information collection.

Each manufacturer was also required to establish requirements, analysis, and designs for their new recalls look-up tools. These additional burdens stemmed from: The creation of the VIN search interface; database setup to host the recall information; data refresh procedures to populate recall information; server side VIN code lookup and recall status retrieval; integration with existing manufacturer Web site; and application testing. We estimated these burdens to total 1,332 hours and $130,005 and these costs will now be removed from this information collection.

We continue to believe nine vehicle manufacturers, who did not operate VIN-based recalls lookup systems prior to August 2013, incur certain recurring burdens on an annual basis. We estimate that 100 burden hours will be spent on system and database administrator support. These 100 burden hours include: Backup data management and monitoring; database management, updates, and log management; and data transfer, archiving, quality assurance, and cleanup procedures. We estimate another 100 burden hours will be incurred on web/application developer support. These burdens include: operating system and security patch management; application/web server management; and application server system and log files management. We estimate these burdens will total 1,800 hours each year (9 MFRs × 200 hours). We estimate the recurring costs of these burden hours will be $30,000 per manufacturer.[1] We continue to estimate that the total cost to the industry from these recurring expenses will total $270,000, on an annual basis (9MFRs × $30,000).

The Agency previously estimated one-time startup costs that manufacturers would assume in order to meet certain technical access requirements to provide recall information to NHTSA's Web site. We estimated that the total one-time costs to the industry from these technical access requirements would require 1,914 burden hours (27 MFRs × 72 hours) and total $189,270 (27 MFRs × $7,010) and we are now removing these costs from this information collection.

The Agency previously estimated one-time startup costs manufacturers incurred to create a VIN list for 15 years of recall information. We estimated that the total one-time costs to the industry from this VIN list creation would require 1,620 hours (27 MFRs × 60 hours). We are now removing these costs from this information collection.

Changes to 49 CFR part 573 in 2013 required 27 manufacturers to update each recalled vehicle's repair status no less than every 7 days, for 15 years from the date the VIN is known to be included in the recall. This ongoing requirement to update the status of a VIN for 15 years continues to add a recurring burden on top of the one-time burden to implement and operate these online search tools. We calculate that 8 affected motorcycle manufacturers will make recalled VINs available for an average of 2 recalls each year and 19 affected light vehicle manufacturers will make recalled VINs available for an average of 8 recalls each year. We believe it will take no more than 1 hour, and potentially much less with automated systems, to update the VIN status of vehicles that have been remedied under the manufacturer's remedy program. We continue to estimate this will require 8,736 burden hours per year (1 hour × 2 recalls × 52 weeks × 8 MFRs + 1 hour × 8 recalls × 52 weeks × 19 MFRs) to support the requirement to update the recalls completion status of each VIN in a recall at least weekly for 15 years.

As the number of Part 573 Recall Reports has increased in recent years, so has the number of quarterly reports which track the completion of safety recalls. Our previous estimate of 3,000 quarterly reports received annually is now revised up to an average of 3,800 reports annually. The quarterly reporting burden now totals 15,200 hours (3,800 quarterly reports × 4 hours/report).

NHTSA's last update to this information collection established a new online recalls portal for the submission of recall documents. We continue to estimate a small burden of 2 hours annually in order to set up a manufacturer's online recalls portal account with the pertinent contact information and maintaining/updating their account information as needed. We estimate this will require a total of 550 hours annually (2 hours × 275 MFRs).

Also updated in the last revision to this information collection, NHTSA established a requirement that manufactures change or update recall components in their Part 573 Safety

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[1] $8,000 (for data center hosting for the physical server) + $12,000 (for system and database administrator support) + $10,000 (for web/application developer support) = $30,000.

Recall Report. We continue to estimate that 20 percent of Part 573 reports will involve a change or addition. At 30 minutes per amended report, this totals 86 burden hours per year (854 recalls × .20 = 171 recalls; 171/2 = 86 hours).

As to the requirement that manufacturers notify NHTSA in the event of a bankruptcy, we expect this notification to take an estimated 2 hours to draft and submit to NHTSA. We continue to estimate that only 10 manufacturers might submit such a notice to NHTSA each year, so we calculate the total burden at 20 hours (10 MFRs × 2 hours).

We continue to estimate that it takes manufacturers an average of 8 hours to draft their notification letters, submit them to NHTSA for review, and then finalize them for mailing to their affected owners and purchasers. We estimate that the 49 CFR part 577 requirements result in 6,832 burden hours annually (8 hours per recall × 854 recalls per year).

The estimate associated with the regulation which requires owner notifications within 60 days of filing a Part 573 Safety Recall Report remains must similarly be revised with an increase in recalls. We previously calculated that about 25 percent of past recalls did not include an owner notification mailing within 60 days of the filing of the Part 573 Safety Recall Report. However, recent trends show that only about 10 percent of recalls require an interim owner notification mailing. Under the regulation, manufacturers must send two letters in these cases: An interim notification of the defect or noncompliance within 60 days and a supplemental letter notifying owners and purchasers of the available remedy. Accordingly, we estimate that 680 burden hours are associated with this 60-day interim notification requirement (854 recalls × .10 = 85 recalls; 85 recalls times 8 hours per recall = 680 hours).

As for costs associated with notifying owners and purchasers of recalls, we continue to estimate this costs $1.50 per first class mail notification, on average. This cost estimate includes the costs of printing, mailing, as well as the costs vehicle manufacturers may pay to third-party vendors to acquire the names and addresses of the current registered owners from state and territory departments of motor vehicles. In reviewing recent recall figures, we determined that an estimated 58.4 million letters are mailed yearly totaling $87,600,000 ($1.50 per letter × 58,400,000 letters). The requirement in 49 CFR part 577 for a manufacturer to notify their affected customers within 60 days would add an additional $8,760,000 (58,400,000 letters × .10 requiring interim owner notifications = 5,840,000 letters; 5,840,000 × $1.50 = $8,760,000). In total we estimate that the current 49 CFR part 577 requirements cost manufacturers a total of $96,360,000 annually ($87,600,000 owner notification letters + $8,760,000 interim notification letters = $96,360,000).

Due to the past burdens associated with the requirement that certain vehicle manufacturers setup VIN Look-up systems for their recalled vehicles, many burden hours have been removed from this information collection as these burdens and costs have already occurred. However, given the recent increase in the number of safety recalls the Agency administers yearly and the volume of products included in those recalls, this information collection burden hour total is increased from previous estimates. The 49 CFR part 573 and 49 CFR part 577 requirements found in today's rule will require 46,965 hours each year for OMB Control Number 2127–0004, an increase of 827 burden hours. Additionally, manufacturers impacted by 49 CFR part 573 and 49 CFR part 577 requirements will incur a recurring annual cost estimated at $96,630,000 total.

Estimated Number of Respondents—NHTSA receives reports of defect or noncompliance from roughly 275 manufacturers per year. Accordingly, we estimate that there will be approximately 275 manufacturers per year filing defect or noncompliance reports and completing the other information collection responsibilities associated with those filings.

In summary, we estimate that there will be a total of 275 respondents per year associated with OMB No. 2127–0004.

Gregory K. Rea,

Associate Administrator for Enforcement.

[FR Doc. 2016–15112 Filed 6–24–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2016–0049]

Pipeline Safety: Gaseous Carbon Dioxide Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: PHMSA is seeking public comment on a PHMSA-authored report titled: "Background for Regulating the Transportation of Carbon Dioxide in a Gaseous State," which is available in the docket at PHMSA–2016–0049. The report evaluates existing and potential future gaseous carbon dioxide (CO2) pipelines and outlines PHMSA's approach for establishing minimum pipeline safety standards for the transportation of carbon dioxide in a gaseous state to fulfill the requirements of section 15 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (the Act). The Act requires the Secretary of Transportation to "prescribe minimum safety standards for the transportation of carbon dioxide by pipeline in a gaseous state." PHMSA is seeking to better understand the possible effects of the regulatory scenarios presented within the report, as well as the locations and extent of gaseous carbon dioxide pipelines, and is requesting feedback on the validity and applicability of these effects and the location and extent of these pipelines. As PHMSA does not currently regulate these pipelines, its ability to reach out and locate operators of gaseous carbon dioxide pipelines has been limited and it is unclear if PHMSA's current information is comprehensive.

DATES: The public comment period for this notice ends July 27, 2016.

ADDRESSES: You may submit comments identified by the Docket ID PHMSA–2016–0049 by any of the following methods:

- *E-Gov Web site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.

Hand Delivery: DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the Docket ID at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: Comments will be posted without changes or edits to *http://www.regulations.gov* including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: Kenneth Lee, Director, Engineering and Research Division, at 202–366–2694 or *Kenneth.lee@dot.gov* about the subject matter in this notice.

SUPPLEMENTARY INFORMATION: Section 15 of the Act requires the Secretary of Transportation to "prescribe minimum safety standards for the transportation of carbon dioxide by pipeline in a gaseous phase."

The Act requires that in "establishing the standards, the Secretary shall consider whether applying the minimum safety standards in part 195 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this paragraph, for the transportation of carbon dioxide in a liquid state to the transportation of carbon dioxide in a gaseous state would ensure safety." Further, the Act limited this authority, stating: "Nothing in this subsection authorizes the Secretary to regulate piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation, or treatment of carbon dioxide or the preparation of carbon dioxide for transportation by pipeline at production, refining, or manufacturing facilities."

After carefully reviewing the available information with regard to gaseous carbon dioxide pipelines, PHMSA has been unable to identify specific gaseous carbon dioxide pipelines or pipeline operators that would potentially be subject to future regulation per section 15 of the Act. For instance, in PHMSA's aforementioned report, a 78-mile, low-pressure gaseous carbon dioxide pipeline was identified as being located within a gas gathering field. In that instance, the applicability of future regulations could be unclear. PHMSA's report outlines much of the information gathered and available to PHMSA, which appears to support the likelihood that a majority of the carbon dioxide transported over distances would be in the supercritical fluid state, thereby subjecting these lines to the existing part 195 regulations, where applicable.

PHMSA is seeking public comment to better understand the possible effects of the regulatory scenarios presented within the report, information considered within the report, conclusions that could be drawn from the report, information missing from the report, and to better understand the locations and extent of gaseous carbon dioxide pipelines (whether existing or planned). Since PHMSA does not currently regulate these pipelines, its ability to reach out and locate potentially affected operators has been limited. PHMSA welcomes views and updates on the necessity for and approach to regulations for gaseous carbon dioxide pipelines per section 15 of the Act. Some areas of interest include:

1. Comments and suggestions with respect to the information included within the report, including comments on gaseous carbon dioxide pipelines and their regulation in general, as well as any conclusions readers can draw from the information presented.

2. Identifying gaseous carbon dioxide pipelines or pipeline operators not already identified in the report that would potentially be subject to regulation if they are regulated as outlined in the report per the requirements of section 15 of the Act. Include details, if available, such as pipeline location and length.

3. Identifying and discussing likely locations for the future construction of gaseous carbon dioxide pipelines not already discussed in the report that would potentially be subject to regulation if regulated as outlined in the report per the requirements of section 15 of the Act.

4. Comments on the two potential options for regulating gaseous carbon dioxide outlined in the report. These options would:

- Regulate the transport of gaseous CO2 entirely under part 192, or
- Regulate the transport under part 192, where appropriate, with reference to applicable sections of part 195.

If a particular regulatory approach is more appropriate or preferable, please provide supporting examples and reasons why. If against either approach, please provide supporting examples and reasons for being against the approach.

5. The report identifies industry projections for carbon dioxide pipeline need and growth. Please discuss whether these projections are consistent and accurate with current data. If they have changed, please discuss how they have changed.

6. Please comment on any technical standards addressing gaseous carbon dioxide pipelines that PHMSA could consider incorporating into any potential regulations.

7. If PHMSA pursues one of the regulatory scenarios presented within the report, and as stated in Area #4 above, would a simpler approach be adequate and responsible at this time? Could PHMSA make a change to the scope of part 192 to include gaseous carbon dioxide without any further technical differentiations within the regulations or without referencing the regulations for carbon dioxide in the supercritical state per existing part 195 regulations?

Issued in Washington, DC, on June 22, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 2016–15123 Filed 6–24–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0066 (Notice No. 2016–10)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on an information collection pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before August 26, 2016.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2016–0066) by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington,

DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov.* Note that comments received will be posted without change to: *http://www.regulations.gov* including any personal information provided.

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for renewal and extension. This information collection is contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collection was last approved. The following information is provided for the information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for the information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collection:

Title: Hazardous Materials Incident Reports.

OMB Control Number: 2137–0039.

Summary: This collection is applicable upon occurrence of an incident as prescribed in §§ 171.15 and 171.16. A Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a person in physical possession of a hazardous material at the time a hazardous material incident occurs in transportation, such as a release of materials, serious accident, evacuation, or closure of a main artery. Incidents meeting criteria in§ 171.15 also require a telephonic report. This information collection enhances the Department's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway.

Affected Public: Shippers and carriers of hazardous materials.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 1,781.

Total Annual Responses: 17,810.

Total Annual Burden Hours: 23,746.

Frequency of collection: On occasion.

Signed in Washington, DC, on June 21, 2016.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–15069 Filed 6–24–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service, Scientific Merit Review Board; Amended Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Health Services Research and Development Service Scientific Merit Review Board will conduct in-person and teleconference meetings of its seven Health Services Research (HSR) subcommittees on the dates below from 8:00 a.m. to approximately 5:00 p.m. (unless otherwise listed) at the Hilton Crystal City, 2399 Jefferson Davis Highway, Crystal City, VA 22202 (unless otherwise listed):

- HSR 1—Health Care and Clinical Management on August 23–24, 2016;
- HSR 2—Behavioral, Social, and Cultural Determinants of Health and Care on August 23–24, 2016;
- HSR 3—Healthcare Informatics on August 24–25, 2016;
- HSR 4—Mental and Behavioral Health on August 23–24, 2016;
- HSR 5—Health Care System Organization and Delivery on August 24–25, 2016;
- HSR 6—Post-Acute and Long-term Care on August 23, 2016;
- HSR 8—Randomized Program Evaluations from 8:00 a.m. to 12:00 p.m. on August 25, 2016; HSR 0—Precision Mental Health from 1:00 p.m. to 5:00 p.m. on August 25, 2016;
- CDA—Career Development Award Meeting on August 25–26, 2016; and
- NRI—Nursing Research Initiative from 1:00 p.m. to 5:00 p.m. on August 26, 2016.

** This notice is amended to reflect changes in one or more of the meetings (i.e. date, time, etc.).

The purpose of the Board is to review health services research and development applications involving: the measurement and evaluation of health care services; the testing of new methods of health care delivery and management; and nursing research. Applications are reviewed for scientific and technical merit, mission relevance, and the protection of human and animal subjects. Recommendations regarding funding are submitted to the Chief Research and Development Officer.

Each subcommittee meeting of the Board will be open to the public the first day for approximately one half-hour at the start of the meeting on August 23 (HSR 6), August 23–24 (HSR 1, 2, 4), August 24–25 (HSR 3, 5), August 25 (HSR 0, 6, 8), August 25–26 (CDA), and August 26 (NRI) to cover administrative matters and to discuss the general status of the program. Members of the public who wish to attend the open portion of the subcommittee meetings may dial 1–800–767–1750, participant code 10443#.

The remaining portion of each subcommittee meeting will be closed for the discussion, examination, reference to, and oral review of the intramural research proposals and critiques. During the closed portion of each subcommittee meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

No oral or written comments will be accepted from the public for either portion of the meetings. Those who plan to participate during the open portion of a subcommittee meeting should contact Ms. Liza Catucci, Administrative Officer, Department of Veterans Affairs, Health Services Research and Development Service (10P9H), 810 Vermont Avenue NW., Washington, DC, 20420, or by email at *Liza.Catucci@va.gov*. For further information, please call Ms. Catucci at (202) 443–5797.

Dated: June 22, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–15088 Filed 6–24–16; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 229, 239 and 249
Modernization of Property Disclosures for Mining Registrants; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 239, and 249

[Release Nos. 33–10098; 34–78086; File No. S7–10–16]

RIN 3235–AL81

Modernization of Property Disclosures for Mining Registrants

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing revisions to the property disclosure requirements for mining registrants, and related guidance, currently set forth in Item 102 of Regulation S–K under the Securities Act of 1933 and the Securities Exchange Act of 1934 and in Industry Guide 7. The proposed revisions are intended to provide investors with a more comprehensive understanding of a registrant's mining properties, which should help them make more informed investment decisions. The proposed revisions would also modernize the Commission's disclosure requirements and policies for mining properties by aligning them with current industry and global regulatory practices and standards. In addition, we are proposing to rescind Industry Guide 7 and include the Commission's mining property disclosure requirements in a new subpart of Regulation S–K.

DATES: Comments should be received on or before August 26, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an Email to *rule-comments@sec.gov.* Please include File Number S7–10–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–10–16. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's Web site. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, in the Division of Corporation Finance, at (202) 551–3450, or Dr. Kwame Awuah-Offei, Academic Mining Engineering Fellow, in the Division of Corporation Finance, at (202) 551–3790, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing to rescind Industry Guide 7 [1] under the Securities Act [2] and the Exchange Act,[3] amend section 102 of Regulation S–K,[4] add new exhibit (96) to Item 601 of Regulation S–K,[5] add new subpart 1300 of Regulation S–K,[6] amend Form 1–A,[7] and amend Form 20–F.[8]

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I. Introduction

The Commission's disclosure requirements and related guidance for properties owned or operated by mining companies are contained in Item 102 of Regulation S–K and Industry Guide 7. Item 102 sets forth the basic disclosure requirements for a registrant's "principal" mines that are "materially

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[1] 17 CFR 229.801(g) and 229.802(g).

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 229.102.

[5] Proposed 17 CFR 229.601(b)(96).

[6] Proposed 17 CFR 229.1301 *et seq.*

[7] 17 CFR 239.90.

[8] 17 CFR 249.220f.

important."[9] Instruction 3 to Item 102 requires disclosure of "material information" concerning the "production, reserves, locations, development, and the nature of the registrant's interest," including additional disclosure requirements for individual properties that "are of major significance to an industry segment." Instruction 7 to Item 102 states that "the attention of issuers engaged in significant mining operations is directed to the information called for in Guide 7," which identifies disclosures beyond what is required by Item 102.

Guide 7 sets forth the views of the staff of the Division of Corporation Finance on how mining company registrants can comply with the Commission's description of property disclosure requirements applicable to registrants.[10] The centerpiece of Guide 7 is its disclosure guidance for mineral reserves, which are defined as "that part of a mineral deposit that can be economically and legally extracted or produced at the time of the reserve determination."[11] Guide 7 further classifies mineral reserves into "proven" and "probable," with proven mineral reserves having a higher degree of assurance than probable mineral reserves. The Guide does not define the term "mineral."

Under both Item 102 and the Guide, a registrant may not disclose estimates for non-reserve deposits, such as mineral resources,[12] unless such information is required to be disclosed "by foreign or state law" or unless "such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge, or consolidate with the registrant, or otherwise to acquire the registrant's securities."[13] While there are numerous foreign mining disclosure codes, only Canada[14] has adopted its code as a matter of law.[15]

Guide 7 has not been updated for more than 30 years.[16] During this period, mining has become an increasingly globalized industry and several foreign countries have adopted mining disclosure standards based on the Committee for Mineral Reserves International Reporting Standards (CRIRSCO)[17] that significantly differ from the Guide. For example, the CRIRSCO standards[18] require companies to disclose material mineral resources; require that any public report about a company's exploration results,[19] mineral resources and mineral reserves be prepared by a "Competent or Qualified Person;"[20] and permit disclosure of mineral reserves to be based on a preliminary feasibility ("pre-feasibility") study or a final feasibility study.[21]

Over the years, as part of its filing review and comment process, the staff has provided supplemental guidance, including requesting clarifications or additional disclosure, to assist registrants in providing the appropriate disclosure about their mining operations and properties. For example, in contrast to the practice under the CRIRSCO standards, the staff historically has requested that a registrant obtain a specific type of feasibility study (*i.e.,* a final feasibility study) in order to support a determination of mineral reserves.

Because of the widespread adoption of the CRIRSCO standards, industry participants have requested revisions to Guide 7.[22] Among other matters,[23] these participants have urged the Commission to align its mining disclosure rules with the CRIRSCO-based codes by allowing a mining registrant to disclose both mineral resources and reserves.[24] These

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[9] Instruction 2 to Item 102 refers registrants to Instruction 1 to Item 101 of Regulation S–K for the quantitative and qualitative factors they should take into account in determining whether properties should be described under Item 102.

[10] When it published the first Industry Guides in 1968, the Commission stated that, "[t]hese guides are not rules of the Commission nor are they published as bearing the Commission's official approval. They represent policies and practices followed by the Commission's Division of Corporation Finance in the administration of the registration requirements of the Act, but do not purport to furnish complete criteria for the preparation of registration statements." Release No. 33–4936 (December 9, 1968) [33 FR 18617] (December 17, 1968).

[11] *See* paragraph (a)(1) of Guide 7.

[12] Resources are generally defined in international mining codes, and generally understood in the industry, as mineral deposits having prospects for economic extraction that are less certain than those for reserves because economic viability has yet to be demonstrated. *See, e.g,* SME Guide for Reporting Exploration Results, Mineral Resources and Mineral Reserves ("SME Guide") pt. 33 (2014), which is available at: *http://www.smenet.org/docs/publications/2014_SME_Guide_Reporting_%20June_10_2014.pdf. See also* section II.E, *infra.*

[13] *See* Instruction 5 to Item 102 of Regulation S–K. Instruction 3 to paragraph (b)(5) of Guide 7 also includes the same provision limiting disclosure of estimates for deposits other than mineral reserves, as does Instruction 1 to Item 4.D of Form 20–F.

[14] *See* Canada's National Instrument ("NI") 43–101 ("Standards of Disclosure for Mineral Projects") (2012), which is available at: *http://web.cim.org/standards/documents/Block484_Doc111.pdf.* Other foreign mining codes have been adopted as listing standards for foreign securities exchanges or as guidelines by foreign securities commissions. The staff in the Commission's Division of Corporation Finance has taken the view that these other codes are not covered by Item 102's "foreign or state law" exception. Therefore, in the staff's view, only the Canadian mining disclosure requirements serve as a basis for disclosure of mineral resource estimates in SEC filings, and only with respect to Canadian registrants.

[15] We are not aware of any state mining disclosure laws that are applicable and have not observed a company providing mineral resource disclosure based on state law.

[16] The disclosure requirements for companies engaged in mining activities were last updated in 1982 when the Commission amended Form S–18 to add certain disclosure requirements applicable to mining companies. *See* Release No. 33–6406 (June 4, 1982) [47 FR 25126] (June 10, 1982). The Commission later transferred its mining disclosure requirements from Form S–18 to Guide 7. *See* Release No. 33–6949 (July 30, 1992) [57 FR 36442] (August 13, 1992).

[17] CRIRSCO is an international initiative to standardize definitions for mineral resources, mineral reserves, and related terms for public disclosure. CRIRSCO has representatives from professional societies involved in developing mineral reporting guidelines in Australasia (Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (JORC)), Canada (Canadian Institute of Mining Metallurgy and Petroleum (CIM)), Chile (Minera Comision), Europe (Pan-European Reserves and Resources Reporting Committee (PERC)), Mongolia (Mongolian Professional Institute of Geosciences and Mining (MPIGM)), Russia (National Association for Subsoil Examination (NAEN)), South Africa (South African Code for Reporting of Exploration Results, Mineral Resources and Mineral Reserves (SAMREC)), and the USA (Society for Mining, Metallurgy and Exploration, Inc. (SME)). CRIRSCO's Web site is located at: *http://www.crirsco.com.*

[18] The CRIRSCO-based codes, which are best practices of professional associations, have been incorporated into the listing rules of various foreign stock exchanges. All the codes (together with the listing rules that make them binding) require disclosure of exploration results, mineral resources, mineral reserves, and other information about mining properties as long as they are deemed material.

[19] Exploration results are defined as data and information generated by mineral exploration programs that might be of use to investors but which do not form part of a disclosure of mineral resources or mineral reserves. *See, e.g.,* CRIRSCO's International Reporting Template pt. 18 (2013), which is available at: *http://www.crirsco.com/templates/international_reporting_template_november_2013.pdf.*

[20] In addition, the CRIRSCO-based codes require that the qualified person must consider and apply certain factors ("modifying factors") in his/her evaluation of the economic prospects and economic viability of the minerals. See the discussion in Sections II.F.1 and II.F.2, *infra.*

[21] A feasibility study is a technical and economic study of a mineral project necessary to demonstrate that extraction is economically viable. The two kinds of studies commonly used to demonstrate economic viability, in public disclosure, are preliminary feasibility (also called pre-feasibility) and final feasibility (also called feasibility) studies. A feasibility study is more comprehensive, and as a result more accurate, than a pre-feasibility study.

[22] *See, e.g.,* the petition for rulemaking by the Society for Mining, Metallurgy and Exploration, Inc. ("SME Petition for Rulemaking ") (October 1, 2012), which is available at: *http://www.sec.gov/rules/petitions/2012/petn4-654.pdf.*

[23] For example, the SME also specifically expressed concern regarding the limited guidance provided by the staff on when the disclosure of certain non-reserve deposits known as "mineralized material" would be appropriate.

[24] We also have received letters from members of the United States Congress requesting that the Commission update and harmonize Guide 7 with global reporting requirements. *See* the letter, dated

Continued

participants asserted that this would provide investors with a more complete understanding of the economic potential of a registrant's properties.[25] Finally, these participants also requested that the Commission address what they characterize as the uncertainty caused by the fact that Guide 7 and staff comment letters are not rules of the Commission, but rather non-binding guidance provided by the Division of Corporation Finance ("Division").[26]

In light of these global developments and industry participants' concerns, we are proposing to modernize our disclosure rules for properties owned or operated by mining companies by more closely aligning those rules with the CRIRSCO-based codes in several respects. For example, the proposed rules would require a registrant with material mining operations to disclose, in addition to its mineral reserves, mineral resources that have been determined based upon information and supporting documentation by one or more qualified persons. Industry participants assert that such an alignment should help place U.S. mining registrants on a more level playing field with non-U.S. mining companies that are subject to one or more of the CRIRSCO-based mining codes.[27] This release requests comment on all aspects of our proposed rules, and we encourage all interested parties, including investors, companies, and other market participants, to submit comments.[28]

II. Proposed Mining Disclosure Rules

A. Consolidation of the Mining Disclosure Requirements

As noted above, the Commission's current mining disclosure regime involves overlapping disclosure requirements and policies in different locations (Regulation S–K and Guide 7), with an instruction (Instruction 7 to Item 102) that registrants engaged in significant mining operations should "direct their attention" to Guide 7. The combination of the overlapping structure of the disclosure regime for mining registrants and the brevity of Guide 7 (which has led to a significant amount of staff interpretive guidance through the comment process) may have created some regulatory uncertainty among mining registrants, particularly new registrants.

To help address this uncertainty, we propose to rescind Guide 7 and create new Regulation S–K subpart 1300[29] that would govern disclosure for registrants with mining operations.[30] In addition, we propose to amend Item 102 of Regulation S–K to replace the instruction that "the attention of issuers engaged in significant mining operations is directed to the information called for in Guide 7" with a new instruction requiring all mining registrants to refer to and, if required, provide the disclosure under new Regulation S–K subpart 1300.[31]

Foreign private issuers that use Form 20–F to file their Exchange Act registration statements and annual reports, or that refer to Form 20–F when filing their Securities Act registration statements on Forms F–1 and F–4, are generally not subject to Regulation S–K. Because we believe that the same property disclosure requirements should apply to both domestic and foreign mining registrants, the proposed rules would amend Form 20–F to instruct registrants to refer to, and if required, provide the disclosure under subpart 1300 of Regulation S–K.[32] This proposed treatment would be consistent with current staff practice whereby foreign registrants are subject to the same Guide 7 and other disclosures as domestic mining registrants.

Having one source for mining disclosure obligations should facilitate mining registrants' compliance with their disclosure requirements by eliminating the complexity resulting from the existing structure of Commission disclosure obligations in Regulation S–K and staff disclosure guidance in Industry Guide 7. Moreover, consolidating the disclosure requirements from Guide 7 into Regulation S–K would eliminate any uncertainty about their authority.[33]

Request for Comment

1. The Commission's current mining disclosure regime consists of disclosure requirements located in Item 102 of Regulation S–K and disclosure policies located in Guide 7. Has this disclosure regime caused uncertainty for mining registrants? If so, would establishing a sole regulatory source for mining disclosure by rescinding Guide 7 and including the disclosure requirements for mining registrants in a new Regulation S–K subpart, as proposed, reduce this uncertainty?

2. Should we amend Item 102 of Regulation S–K by eliminating the instruction that refers mining registrants to the information called for in Guide 7 and instead instruct them to refer to, and if required, provide the disclosure under new Regulation S–K subpart 1300, as proposed? Should we instead retain Guide 7 and Item 102 of Regulation S–K as separate sources for mining disclosures? If so, how should they apply to registrants?

B. The Standard for Mining-Related Disclosure

1. Overview

Under Item 102 of Regulation S–K, registrants are required to disclose principal mines, other materially important physical properties, and significant mining operations. Guide 7 only applies to registrants engaged or to be engaged in significant mining operations. When construed together, Item 102 and Guide 7 suggest that there are two levels of reporting under the Commission's current mining disclosure regime. For registrants that have one or

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July 7, 2014, from Representatives Shelley Moore Capito, Stevan Pearce, Blaine Luetkemeyer, Sean Duffy, Steve Stivers, Stephen Fincher, Mick Mulvaney, Randy Hultgren, Ann Wagner, Andy Barr, Tom Cotton, Keith Rothfus, and William Lacy Clay; and the letter, dated August 13, 2014, from Senators Dean Heller, Mike Crapo and John Tester. These letters are available at: *http://www.sec.gov/comments/disclosure-effectiveness/disclosure effectiveness.shtml.*

[25] Unless otherwise stated, in this release the term "property" refers to mining properties, which are properties at which the registrant engages in mining activities. Mining activities include exploration, development and production of minerals. The term "mine" refers to a specific geographic location at which the registrant produces minerals. A property could include multiple mines.

[26] *See* SME Petition for Rulemaking at 9.

[27] In this regard, the SME has questioned the attractiveness of the U.S. capital markets for mining companies in light of the differences between Guide 7 and the CRIRSCO-based codes: "All of these factors decrease the attractiveness of the U.S. market to current and potential reporting companies. In light of increased globalization, companies have more choices as to which capital markets to access. Although the U.S. still presents one of the largest markets and thus will attract companies on that basis alone, there is a marked reluctance, particularly among exploration-stage mining companies, to pursue initial listings in the U.S. This harms our stock exchanges, as well as our financial markets." SME Petition for Rulemaking at 14.

[28] The Commission also has issued a concept release on Regulation S–K seeking input on updating and modernizing our business and financial disclosure requirements. *See* Release No. 33–10064 (April 13, 2016), [81 FR 23916] (April 22, 2016). The concept release requests comment on a range of topics that also may apply to mining companies, such as disclosure pertaining to risk factors, description of property and sustainability. We continue to encourage interested parties to submit comments on the concept release.

[29] Proposed 17 CFR 229.1301 *et seq.*

[30] Proposed Regulation S–K subpart 1300 would apply to registration statements under the Securities Act and the Exchange Act as well as to annual reports under the Exchange Act.

[31] Registrants that have material non-mining operations would continue to provide non-mining property disclosures under Item 102 of Regulation S–K.

[32] *See* section II.H., *infra.*

[33] *See* note 26, *supra.* We discuss the expected benefits and costs of the proposed rules in section IV, *infra.*

more principal mines or other materially important properties but lack significant mining operations, Item 102 requires less detailed information. For registrants that have significant mining operations, Guide 7 calls for more extensive disclosures. Although both Item 102 and Guide 7 refer to "significant" mining operations, the staff historically has advised registrants to apply materiality in determining what disclosures to provide.

Guide 7 does not define "significant" mining operations while Item 102 does not specify the particular quantitative factors to be considered in determining the materiality of a mine. In the absence of specific guidance, the staff has historically used 10% of a registrant's total assets as the benchmark for determining the materiality of a registrant's mining operations.

We propose that a registrant be required to provide the disclosure under new subpart 1300 of Regulation S–K if its mining operations, as that term is defined in Instruction 1 to proposed Item 1301(b),[34] are material to its business or financial condition.[35] For purposes of the new subpart, the term "material" would have the same meaning as under Securities Act Rule 405 and Exchange Act Rule 12b–2.[36]

Under proposed new subpart 1300, when determining the materiality of its mining operations, a registrant would have to:

- Consider both quantitative and qualitative factors, assessed in the context of the registrant's overall business and financial condition;
- aggregate mining operations on all of its mining properties, regardless of size or type of commodity produced, including coal, metalliferous minerals, industrial materials, geothermal energy, and mineral brines;[37] and
- include, for each property, as applicable, all related mining operations from exploration through extraction to the first point of material external sale, including processing, transportation, and warehousing.[38]

Consistent with current staff guidance, we are proposing to define "mining operations" to include all related activities from exploration through extraction to the first point of material external sale.[39] We believe that including all activities up to the point of first material external sale is appropriate because all such activities are necessary to convert the mineral resource to saleable product, which generates the registrants' revenues. This definition would, however, exclude all activities subsequent to the first point of sale. Although such activities may add value to the saleable mining product, they are not necessary to convert the resource into a saleable product. For example, an aluminum producer who has material bauxite mining operations and material external bauxite sales would not include any subsequent refinery activities (such as processing the bauxite into aluminum) in the scope of its mining property disclosure. We also note that, because this approach would be consistent with current staff guidance, it is not expected to significantly alter existing disclosure practices.

Proposed new subpart 1300 would instruct that a registrant's mining operations are presumed to be material if its mining assets constitute 10% or more of its total assets.[40] We believe it would be appropriate to presume materiality under the proposed rules when mining assets are at or above a threshold of 10 percent of total assets because at that level the mining assets are likely to contribute significantly to the registrant's business or financial condition. We further believe that the 10% asset threshold is appropriate because it is consistent with similar 10% thresholds that the Commission has used to determine disclosure requirements under a variety of forms and rules.[41] Finally, the proposed asset test would provide registrants with an easily applied quantitative standard to use regarding whether they are subject to the new mining disclosure requirements.

The proposed new subpart would further instruct that if a registrant's mining assets fall below the 10% total assets threshold, it would need to consider if there are other factors, quantitative or qualitative, which would render its mining operations material.[42] Such factors could include:

- Mining operations that constitute 10% or more of some other financial measure, such as the registrant's total revenues, net income or operating income;
- evidence that disclosure of a similar property or properties has had a significant impact on the price of a registrant's securities;
- public disclosure by the registrant discussing the importance to its operations (*e.g.*, from an operational or competitive standpoint) of a particular property or properties;
- the unique or rare nature of the particular mineral or the importance of the mineral to the registrant's operations;
- the actual and projected expenditures on the registrant's mining properties as compared to its expenditures on non-mining business activities; and
- the amount of capital raised or planned to be raised by the registrant for its mining properties.[43]

The proposed standard is generally consistent with the existing disclosure requirements that registrants routinely apply throughout their required filings. It is also consistent with existing staff guidance relating to the disclosure requirements for companies with mining operations. Moreover, as discussed below, we are proposing rules and instructions to help registrants apply the proposed standard under a variety of circumstances, including situations that are not expressly addressed by the current mining disclosure rules.[44] We believe the proposed requirements could enhance disclosure to investors.

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[34] The term "mining operations" would include operations on all mining properties that a registrant owns or in which it has, or it is probable that it will have, a direct or indirect economic interest. It also would include operations on mining properties that a registrant operates, or it is probable that it will operate, under a lease or other legal agreement that grants the registrant ownership or similar rights that authorize it, as principal, to sell or otherwise dispose of the mineral. Finally, "mining operations" would include operations on mining properties that a registrant has, or it is probable that it will have, an associated royalty or similar right. *See* Instruction 1 to proposed Item 1301(b). For purposes of subpart 1300, the term "probable" would have the same meaning as the U.S. GAAP definition of that term. *See* ASC Section 450–20–20.

[35] *See* proposed Regulation S–K Item 1301(a). Because we are proposing to consolidate the revised mining disclosure rules under new Regulation S–K subpart 1300, the proposed rules would eliminate Instruction 3 to Item 102, which requires the disclosure of certain specified material information, including "more detailed information" about a mining registrant's individual properties that "are of major significance."

[36] *See Id.* Pursuant to Securities Act Rule 405 (17 CFR 230.405) and Exchange Act Rule 12b–2 (17 CFR 240.12b–2), a matter is material if there is a substantial likelihood that a reasonable investor would attach importance to it in determining whether to buy or sell the securities registered. This definition is consistent with the U.S. Supreme Court's holding in *TSC Industries* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976), that a fact is material if there is a substantial likelihood that the fact would have been viewed by a reasonable investor as having significantly altered the "total mix" of information made available.

[37] For a discussion of the treatment of mineral brines and energy under proposed subpart 1300, *see* section II.E.1, *infra*.

[38] *See* proposed Item 1301(b) of Regulation S–K.

[39] *See* proposed Item 1301(b)(3) of Regulation S–K.

[40] *See* Instruction 2 to proposed Item 1301(b) of Regulation S–K. The 10% test is a "rule of thumb" that the staff has historically applied in the mining context.

[41] *See, e.g.*, Item 2.01 of Form 8–K (17 CFR 249.308); sections 4–08 and 10–01 of Regulation S–X (17 CFR 210.4–08 and 210.10–01); and Items 101 and 911 of Regulation S–K (17 CFR 229.101 and 229.911); *see also* ASC Section 280–10–50–12.

[42] *See* Instruction 3 to proposed Item 1301(b) of Regulation S–K. Similarly, because the 10% asset test is a presumption, a registrant with mining operations that constitute more than 10% of its total assets could evaluate all the relevant quantitative and qualitative factors and conclude that the mining operations are not required to be disclosed under the proposed standard.

[43] Many of these factors are similar to factors enunciated in Canada's Companion Policy 43–101CP to National Instrument 43–101, General Guidance, paragraph 5, which is available at: *http://web.cim.org/standards/documents/Block484_Doc111.pdf. See also* the Australian Stock Exchange (ASX) Listing Rules, Guidance Note 31, pt. 2.2, which is available at: *http://www.asx.com.au/documents/rules/gn31_reporting_on_mining_activities.pdf.*

Finally, because the proposed standard is generally consistent with the disclosure standard under the CRIRSCO-based mining codes, it should not alter the disclosure practices of the numerous mining companies that are listed and operate in multiple jurisdictions.

Request for Comment

3. Should the disclosure standard under the revised mining disclosure rules be whether a registrant's mining operations are material to its business or financial condition, as proposed? Why or why not? If not, what standard should we adopt for determining whether a registrant must provide the mining disclosure under the revised rules? Why?

4. Are the quantitative and qualitative factors described in this section relevant to the determination of the materiality of a registrant's mining operations? Why or why not? Are there other factors, such as those identified in Canada's Companion Policy 43–101CP to National Instrument 43–101, General Guidance, that a registrant should consider for the materiality determination instead of or in addition to the factors described in this section? Should we include these or other factors as part of the rule provision governing the materiality determination? If so, which factors should we include in the rule?

5. Should we adopt the proposed presumption that a registrant's mining operations are material if they consist of 10% or more of its total assets? Would a percentage higher or lower than 10% be better than the proposed threshold? Why or why not? Should it be a presumption, as proposed, or should it be a bright line requirement? If the former, how might the presumption be rebutted? Is there another quantitative factor, such as revenues, that a registrant should consider instead of or in addition to the proposed asset test?

6. When assessing the materiality of its mining operations, should we require a registrant to aggregate all of its mining properties, regardless of size or type of commodity produced, including coal, metalliferous minerals, industrial materials, geothermal energy, and mineral brines,[45] as proposed? Why or why not? Should we exclude any of the specified commodities from the proposed aggregation requirement? If so, which commodities and why?

7. When assessing the materiality of its mining operations, should we require a registrant to include, for each property, as applicable, all related activities from exploration through extraction to the first point of material external sale, including processing, transportation, and warehousing, as proposed? Why or why not? Is "the first point of material external sale" the appropriate cut-off or should we use some other measure? Are there certain activities that we should exclude from the materiality determination, even if they occur before the first point of material external sale? If so, which activities, for which minerals or companies, and why? Are there certain activities after the point of first material external sale that we should include? If so, which activities, for which minerals or companies, and why?

8. Are there specific qualitative or quantitative factors relating to the environmental or social impacts of a registrant's properties or operations that a registrant should consider in making its materiality determination?

i. Treatment of Vertically-Integrated Companies

Some companies have material mining operations that are secondary to or in support of their main non-mining business. For example, a metal manufacturer may operate iron ore or coal mines to supply raw material for its primary business. Neither Guide 7 nor Item 102 addresses whether or when a vertically-integrated manufacturer[46] is required to provide mining disclosure.

Proposed new subpart 1300 would apply to all registrants with mining operations, including vertically-integrated manufacturers. Specifically, a mining operation owned by a registrant to support its primary business could be material and require disclosure. The fact that the registrant's primary business operation is something other than minerals extraction would not be determinative of whether disclosure would be required under the proposed subpart.

For example, the bauxite mining operations of an aluminum manufacturer, whose primary business is manufacturing, not mining, could be material and require disclosure if its bauxite operations represent ten percent or more of the registrant's assets, even though they are not the registrant's primary operations, or the primary source of the registrant's revenues. In addition, even if the bauxite or other mining operations of such a vertically-integrated manufacturer constitute less than ten percent of its total assets, its mining operations could still be material and trigger disclosure obligations if, for example, the manufacturer derives a competitive advantage from, or substantially relies upon, its ability to source that particular mineral from its mining operations.

Requiring disclosure of mining operations in such circumstances would be consistent with the disclosure currently provided in SEC filings and should not significantly alter existing disclosure practices. In addition, subjecting vertically-integrated companies to the proposed rules would align the disclosure requirements for such companies with those of companies primarily engaged in mining activities. Also, we note that most of the foreign jurisdictions that have CRIRSCO-based rules require disclosure for material mining properties and provide no exemptions for vertically-integrated companies.[47]

Request for Comment

9. Should we require vertically-integrated companies, such as manufacturers, to provide the disclosure required under new Regulation S–K subpart 1300, as proposed? Why or why not?

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[44] *See* section II.B.1.i–iii, *infra*.

[45] As discussed in section II.E.1, we are proposing that the commodities covered by the definition of mineral resource include mineralization, including dumps and tailings, geothermal fields, mineral brines, and other resources extracted on or within the earth's crust. *See* proposed Item 1301(d)(14)(ii) of Regulation S–K.

[46] A vertically-integrated manufacturer is a company that owns part of its supply chain. In this context, it refers to a registrant that has mining operations to supply raw material to its manufacturing business.

[47] For example, ASX Listing Rules require disclosure of exploration results, mineral resources and mineral reserves for all "material mineral projects." In defining a "material mineral project," the ASX Listing Rules, Guidance Note 31, pt. 2.2, provides that "[i]n many cases, it will be readily apparent that a particular mining activity is a material mining project for the purposes of the Listing Rules and therefore the disclosure requirements in Listing Rules 5.7–5.19 will apply to any disclosures of exploration results, estimates of mineral resources or ore reserves, historical estimates or foreign estimates of mineralisation, or production targets for that project. Judgment however may need to be exercised where an entity has multiple mining projects or where it has a mix of mining projects and other business activities."

ii. Treatment of Multiple Property Ownership

As discussed above, the primary focus of the current rules and guidance is on individually significant or material properties. It is, however, very common for registrants to own multiple mining properties. In some instances, the registrant will have multiple properties that all involve exploration, development or extraction of the same mineral. In other situations, the registrant's operations will primarily involve exploration, development or extraction of one mineral from several properties, but the registrant also will own one or more ancillary properties where it explores, develops or extracts small amounts (relative to the predominant mineral) of a different mineral. Neither Item 102 nor Guide 7 provides guidance concerning when or what disclosure is required in these situations. To address this, the staff has provided interpretive guidance about what, if any, disclosure is required by multiple or ancillary property owners.

Under the proposed rules, a registrant with multiple properties would be required to consider all of its mining properties individually and in the aggregate, regardless of size or commodity produced, when assessing whether it must provide the mining disclosure required by new subpart 1300 of Regulation S–K.[48] A registrant with multiple properties, none of which is individually material, but which in the aggregate constitute material mining operations, would have to provide summary disclosure[49] concerning its combined mining activities rather than providing disclosure for individual properties.[50]

Under the proposed rules, a registrant could be required to provide disclosure for a particular property, depending on the facts and circumstances, even if ancillary to the registrant's predominant commodity. For example, a property on which a registrant explores, develops or extracts a relatively small amount of a particular mineral, compared to its predominant mineral, could be material based upon the amount of actual and projected expenditures on the property as compared to its expenditures on other properties.

We believe the proposed rules would provide a clear and consistent standard for registrants to apply in determining the scope of their disclosure obligations, while helping to ensure that investors receive relevant information about the operations and risks associated with registrants' mining operations.

Request for Comment

10. Should we require a registrant with multiple properties to provide the disclosure required by proposed Regulation S–K subpart 1300, as proposed? Why or why not? Should we require a registrant with multiple properties, none of which is individually material, but which in the aggregate constitute material mining operations, to provide only summary disclosure concerning its combined mining activities, as proposed? Why or why not?

11. Are there difficulties that a registrant with multiple properties could face when determining if disclosure is required under the proposed rules? If so, how should our mining disclosure rules address such difficulties?

12. Should we require more detailed disclosure about individual properties that are material to a registrant's mining operations, as proposed? Why or why not?

iii. Treatment of Royalty Companies and Other Companies Holding Economic Interests in Mining Properties

Some registrants are royalty companies, which are companies that do not own or operate a property, but rather own the right to receive payments, called a royalty right, from the owner or operator of a property.[51] In addition, some registrants hold other economic interests, similar to royalty rights, also without owning or operating a property.[52] Neither Item 102 nor Guide 7 address whether royalty or similar companies must provide disclosure about the mining operations and properties underlying their economic interest. Consequently, the staff has provided guidance about whether and how such companies should provide mining disclosure.

Under the proposed rules, consistent with prior staff guidance, a royalty company or other registrant that holds a similar economic interest would have to provide all applicable mining disclosure if the mining operations that generate the royalty or other payment (the underlying mining operations) are material to the royalty or similar company's operations as a whole. Similar to a producing mining company (that owns or operates properties), a royalty or similar company would have to assess both quantitative and qualitative factors to determine whether the underlying mining operations are material.[53]

Investors in royalty and other similar companies need information about the material mining properties that generate the payments to the registrant, including mineral reserves and production, to be able to assess the amounts, soundness and sustainability of future payments. For the royalty or similar company and its investors, the mining property underlying the royalty or similar payments is the primary or only source of revenues and cash flow. As such, we believe royalty companies and other companies holding similar economic interests should provide the same type and amount of disclosure as registrants with mining operations.

The proposed rules would require a royalty or similar company to provide disclosure only for those underlying properties, or portions of underlying properties, that generate the registrant's royalties or similar payments, and only for the reserves and production that generated its payments in the reporting period.[54] We do not believe that investors in a company holding royalty or similar rights need information relating to portions of the mining property that do not contribute to the registrant's royalty stream, as such portions do not impact the results of operations or overall value of the registrant. This proposed limitation on the scope of the disclosure required for royalty or other similar companies also recognizes the limitations of the company's rights. Specifically, the registrant may not have access to information about portions of the mining property that do not contribute to the registrant's revenue stream.[55]

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[48] *See* proposed Item 1301(b)(2) of Regulation S–K.

[49] *See* section II.G.1, *infra* for a more detailed discussion of the summary disclosure requirements, which would include summary information about a registrant's 20 largest properties, by asset value. In the case of a registrant with material mining operations in the aggregate, but with no individual properties that are material, we believe that investors would benefit more from the proposed summary disclosure concerning the registrant's properties in the aggregate than from detailed disclosure concerning each individual property, some or all of which may not have mineral resources, mineral reserves or exploration results.

[50] To the extent that an individual property is material to a registrant's operations, the proposed rules would also require detailed disclosure about that property. *See* section II.G.2, *infra,* for a discussion of those disclosure requirements.

[51] A royalty, in this context, is typically a payment to the royalty right holder from the property owner or operator in return for: (i) Providing upfront capital; (ii) paying part of amount due land owners or mineral right holders; or (iii) converting a participating interest in a joint venture into a royalty right. Such payment is most often based on a percentage of the minerals, revenues, or profits generated from the property.

[52] Examples include the right to purchase all or a portion of minerals from a mine under a metal purchase agreement (a "stream" agreement) or a working interest in the underlying property.

[53] In this regard, because a registrant with royalty or other similar economic interests does not own or operate the producing property, revenues are often a more relevant benchmark than assets for determining materiality.

[54] *See* Instruction 2 to proposed Item 1303(b)(2) of Regulation S–K and Instruction 4 to proposed Item 1304(b)(5) through (7) of Regulation S–K.

A royalty or similar company would need to describe the material properties that generate its royalties or similar payments and file a technical report summary for each such property.[56] Such a registrant would not, however, have to submit a separate technical report summary about a property that is covered by a current technical report summary filed by the producing mining registrant. In that situation, the royalty or similar company may incorporate by reference the producing registrant's previously filed technical report summary.[57]

Request for Comment

13. Should we require a royalty company, or a company holding a similar economic interest in another company's mining operations, to provide all applicable mining disclosure if the underlying mining operations are material to its operations as a whole, as proposed? Why or why not? Should disclosure for such companies be required under other circumstances?

14. Should we permit a royalty company, or other similar company holding an economic interest in another company's mining operations, to provide only the required disclosure for the reserves and production that generated its royalty payments, or other similar payments, in the reporting period, as proposed? Why or why not? If not, what additional disclosure should be required by such registrants?

15. Should we require a royalty company, or other similar company holding an economic interest in another company's mining operations, to describe its material properties and file a technical report summary for each such property, as proposed? Should we allow a royalty or other similar company to satisfy the technical report summary requirement by incorporating by reference a current technical report summary filed by the producing mining registrant for the underlying property, as proposed? Are there circumstances (*e.g.* when a royalty company purchases a royalty agreement and is not reasonably able to gain access to such information) in which a royalty or similar company should not be required to file a technical report summary concerning the underlying property?

2. Definitions of Exploration, Development and Production Stage

Guide 7 defines the stages used to describe mining operations, "exploration stage," "development stage," and "production stage," as follows:

- Exploration Stage—includes all registrants engaged in the search for mineral deposits (reserves) which are not in either the development or production stage.
- Development Stage—includes all registrants engaged in the preparation of a determined commercially minable deposit (reserves) for its extraction which are not in the production stage.
- Production Stage—includes all registrants engaged in the exploitation of a mineral deposit (reserve).[58]

Guide 7 applies these definitions to the registrant as a whole, however, and not on a property-by-property basis. As such, Guide 7 does not provide guidance as to when and how the definitions of exploration, development and production stage apply to registrants that own properties in different stages. To address this ambiguity and to help ensure that investors receive disclosure that accurately reflects a registrant's operational status, we are proposing to revise the Guide 7 definitions of exploration, development and production stage so that the definitions apply to individual properties, as follows:

- An exploration stage property is a property that has no mineral reserves disclosed;[59]
- a development stage property is a property that has mineral reserves disclosed, but with no material extraction;[60] and
- a production stage property is a property with material extraction of mineral reserves.[61]

We also are proposing to revise the Guide 7 definitions as they apply to issuers in order to recognize that issuers may have properties in differing stages, as follows:

- an exploration stage issuer is one that has no material property with mineral reserves;[62]
- a development stage issuer is one that is engaged in the preparation of mineral reserves for extraction on at least one material property;[63] and
- a production stage issuer is one that is engaged in material extraction of mineral reserves on at least one material property.[64]

Finally, we propose to specify that a registrant that does not have reserves on any of its properties, even if it has mineral resources or exploration results, or even if it is engaged in extraction without first disclosing mineral reserves,[65] cannot characterize itself as a development or production stage company.[66] The proposed rules would also require a company to identify an individual property with no mineral reserves as an exploration stage property, even if it has other properties in development or production.[67]

We believe that these proposed changes would resolve the ambiguities in the Guide 7 definitions. They also would be consistent with prior staff guidance, which should minimize changes in disclosure practices for registrants and their investors. Under the proposed definitions, a registrant would be able to characterize its properties separately, but would be limited in when and how it can characterize its operational stage. Specifically, it would not be able to characterize itself as a development stage registrant unless it is engaged in the preparation of mineral reserves for extraction on at least one material property. We believe this would benefit investors by providing them with clearer, more accurate and consistent disclosure about the type of company and level of risk involved. In particular, prohibiting a registrant without any mineral reserves from characterizing itself as a production or development stage company would help eliminate the possibility that such a registrant, by definition a higher risk company, would incorrectly characterize itself as being in a lower risk stage, thereby potentially misleading or confusing investors.

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[55] This is consistent with the Commission's current rules providing that information required need be given only insofar as it is known or reasonably available to the registrant. *See* Securities Act Rule 409 (17 CFR 230.409) and Exchange Act Rule 12b–21 (17 CFR 240.12b 21).

[56] As discussed, in section II.C.1 *infra,* the proposed rules would require registrants to file technical report summaries, as exhibits, to support disclosure of mineral resources, mineral reserves, and material exploration results.

[57] *See* 17 CFR 230.411 and 17 CFR 240.12b–32, which permit any document filed with the Commission under any act administered by the Commission to be incorporated by reference as an exhibit to a statement or report filed with the Commission by the same or any other person, and require that the registrant clearly identify in the reference the document from which the material is taken.

[58] Guide 7 paragraph (a)(4).

[59] *See* proposed Item 1301(d)(6) of Regulation S–K.

[60] *See* proposed Item 1301(d)(3) of Regulation S–K.

[61] *See* proposed Item 1301(d)(20) of Regulation S–K.

[62] *See* proposed Item 1301(d)(5) of Regulation S–K.

[63] *See* proposed Item 1301(d)(2) of Regulation S–K.

[64] *See* proposed Item 1301(d)(19) of Regulation S–K.

[65] There are registrants that start development or production without first disclosing mineral reserves. Such practices increase the business' risks due to the absence of the detailed technical and economic analysis required to disclose reserves, thus increasing the degree of uncertainty surrounding the quantities and quality of the mineral to be extracted.

[66] *See* the Instruction to proposed Item 1304(b)(3) of Regulation S–K.

[67] *Id.*

Further, providing definitions that apply to specific properties would align the disclosure requirements with current accounting practices under U.S. GAAP and International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB).[68] Conforming the definitions in the proposed requirements to the applicable accounting practice should benefit both registrants and investors by providing a consistent framework for the presentation of financial and property disclosures, thereby reducing compliance burdens and facilitating comparability.

Request for Comment

16. Should we define "exploration stage property," "development stage property" and "production stage property," as proposed? Why or why not? Would these definitions facilitate compliance by registrants with properties in more than one stage of operation?

17. Should we also revise the definitions of "exploration stage issuer," "development stage issuer" and "production stage issuer," as proposed? Why or why not? Should the definition of "development stage issuer" and "production stage issuer" depend on having "at least one material property", as proposed? Should we instead base the definitions on consideration of the characteristics of all mining properties? For example, if a registrant has a single development-stage material property that constitutes 10% of its mining assets, with the remainder of the mining assets all constituting exploration stage properties, should the registrant be able to identify itself as a development stage issuer?

18. Would the two proposed sets of definitions appropriately classify the particular stage of a registrant's mining operations? Should the definitions be property-based and dependent on whether mineral resources or reserves have been disclosed, are being prepared for extraction, or are being extracted, as applicable, on one or more material properties? Would having two proposed sets of definitions create unnecessary complexity or investor confusion?

19. Should the proposed rules specify that a registrant that does not have mineral reserves on any of its properties, even if it has mineral resources or exploration results, or even if it is engaged in extraction without first disclosing mineral reserves, cannot characterize itself as a development or production stage company, as proposed? Why or why not?

C. Qualified Person and Responsibility for Disclosure

1. The "Qualified Person" Requirement

All of the CRIRSCO-based codes require that any public report about a company's exploration results, mineral resources and mineral reserves be based on and fairly reflect information and supporting documentation prepared by a "competent" or "qualified person."[69] "Public report" as used in the CRIRSCO-based codes includes all communication by a company to investors on exploration results, mineral resources and mineral reserves.[70] The purpose of this requirement is to ensure that a registrant's public declaration of exploration results, mineral resources and reserves is supported by the findings of a mineral industry professional having the relevant level of expertise.[71] In contrast, neither Guide 7 nor Item 102 requires that a registrant's disclosure of mineral reserves be based on the findings of an appropriately experienced professional.[72] While an author of a study or technical report that forms the basis of mineral reserves disclosure in a Securities Act registration statement must consent to the use of its name as an expert,[73] there is no requirement to use an expert for reserves disclosure and, if one is used, there are no substantive requirements for that expertise.

We are proposing that every disclosure of mineral resources, mineral reserves and material exploration results reported in a registrant's filed registration statements and reports must be based on, and accurately reflect information and supporting documentation prepared by, a "qualified person,"[74] as defined by the proposed rules.[75] In addition, the proposed rules would require that the registrant:

- Be responsible for determining that the person meets the qualifications specified under the new subpart's definition of "qualified person" and that the disclosure in the filing accurately reflects the information provided by the qualified person;[76]

- obtain a dated and signed technical report summary from the qualified person, which identifies and summarizes for each material property the information reviewed and conclusions reached by the qualified person about the registrant's exploration results, mineral resources or mineral reserves;[77]

- file the technical report summary with respect to every material mining property as an exhibit to the relevant registration statement or other Commission filing when the registrant is disclosing for the first time mineral reserves, mineral resources or material exploration results or when there is a material change in the mineral reserves, mineral resources or exploration results from the last technical report filed for the property;[78]

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[68] Although there is no authoritative guidance under U.S. GAAP that directly addresses accounting for mining activities, the accounting practice has typically been based on the definition of an asset in *Statement of Financial Accounting Concepts Elements of Financial Statements* ("Concept Statement 6"), with a focus on the operational stage of individual properties rather than on the stage of the registrant. Similarly, accounting for costs under IFRS also focuses on individual properties.

[69] *See, e.g.,* CRIRSCO's International Reporting Template pt. 8; Canada's NI 43–101 pt. 2.1; and JORC Code pt. 9.

[70] For example, Australia's JORC Code defines public report as: ". . . reports prepared for the purpose of informing investors or potential investors and their advisers on Exploration Results, Mineral Resources or Ore Reserves. They include, but are not limited to, annual and quarterly company reports, press releases, information memoranda, technical papers, Web site postings and public presentations." JORC Code pt. 6 (2012). The JORC Code is available at: *http://www.jorc.org/docs/JORC_code_2012.pdf.*

[71] The CRIRSCO-based standards are built on three governing principles: transparency, materiality and competence. All these codes define competence to mean that technical work should be done by a professional with requisite expertise. *See, e.g.,* CRIRSCO's International Reporting Template pt. 3, which states: "Competence requires that the Public Report be based on work that is the responsibility of suitably qualified and experienced persons who are subject to an enforceable professional code of ethics and rules of conduct." *See also* JORC Code pt. 9 and SME Guide pt. 3.

[72] Guide 7 only calls for disclosure of the name of the person estimating the reserves and the nature of his or her relationship to the registrant. *See* Guide 7 paragraph (b)(5)(ii). In addition, if a registrant supplementally provides a copy of a technical report to Division staff, Guide 7 specifies that the copy include the name of its author and the date of its preparation, if known to the registrant. *See* Guide 7 paragraph (c)(2).

[73] *See* Securities Act Rule 436 (17 CFR 230.436); *see also* 17 CFR 229.601(b)(23)(i).

[74] *See* proposed Item 1302(a) of Regulation S–K. While we refer to the qualified person in the singular throughout this release, we note that it is common for a registrant to have more than one qualified person prepare a technical report for a mining property or project. As proposed, the registrant's responsibilities would apply to each qualified person so engaged.

[75] *See* section II.C.2, *infra.*

[76] *See* proposed Item 1302(a).

[77] *See* proposed Item 1302(b)(1) of Regulation S–K.

- obtain the written consent of the qualified person to the use of the qualified person's name and any quotation or other use of the technical report summary in the registration statement or report prior to filing the document publicly with the Commission;[79]
- identify the qualified person who prepared the technical report summary in the filed registration statement or report;[80] and
- state whether the qualified person is an employee of the registrant, and if the qualified person is not an employee of the registrant:
    - ○ Name the qualified person's employer;
    - ○ disclose whether the qualified person or the qualified person's employer is an affiliate[81] of the registrant or another entity that has an ownership, royalty or other interest in the property that is the subject of the technical report summary; and
    - ○ if the qualified person or the qualified person's employer is an affiliate, disclose the nature of the affiliation.[82]

If the filing that requires the technical report summary is a Securities Act registration statement, the qualified person would be deemed an "expert" who must provide his or her written consent as an exhibit to the filing pursuant to Securities Act Rule 436.[83] In such situations, the qualified person would be subject to liability as an expert for any untrue statement or omission of a material fact contained in the technical report summary under Section 11 of the Securities Act.[84]

The Securities Act and the Exchange Act each provide that the registration statements and periodic reports required under those statutes shall contain such information and documents as the Commission may require, as necessary or appropriate in the public interest and for the protection of investors.[85] We believe that the proposed requirement that a registrant's disclosure of mineral resources, mineral reserves and material exploration results in SEC filings be based on and fairly reflect information and supporting documentation prepared by a "qualified person" would further the protection of investors for several reasons.

First, this requirement could make the determination and reporting of material exploration results or estimates of mineral resources and reserves more reliable.[86] This is particularly important since we are proposing to require, for the first time, that a registrant with material mining operations disclose mineral resources and material exploration results in SEC filings. Second, we believe that the proposed requirement that a registrant file a copy of the technical report summary for each material property as an exhibit to the SEC filing would enhance investor understanding of a registrant's material properties. Specifically, it would provide investors with a summary of the scientific and technical information that is the basis for the registrant's disclosure of mineral resources, mineral reserves and material exploration results, which should enable investors to assess better the value of the registrant's material properties. Third, the proposed qualified person requirement would help to mitigate any risks associated with our proposal to require disclosure of mineral resources or material exploration results, which reflect a lower level of certainty about the economic value of mining properties than is reflected in the disclosure of mineral reserves.[87] Finally, the proposed qualified person requirement would strengthen the Commission's disclosure requirements in a manner consistent with most foreign mining jurisdictions, thus benefiting investors and promoting uniformity.

We propose to require the registrant to file the technical report summary as an exhibit (rather than in the body of the annual report or registration statement) in order to separate the underlying scientific and technical information in the technical report summary from the narrative disclosure concerning the registrant's operations.[88] We believe this would result in clearer and more accessible disclosure for investors, enabling them to understand the disclosure more effectively from both an operational and technical viewpoint.

The proposed requirement to obtain a signed and dated technical report summary would help establish the authenticity and relevance of the technical report summary. The proposed requirement to obtain the written consent of the qualified person to use his or her name and any quotation or other use of the technical report summary would help ensure that such information is not included in an SEC filing without the qualified person's actual knowledge. In addition, requiring the registrant to file the qualified person's written consent is consistent with the Commission's approach to the use of an expert's report in Securities Act filings[89] and would align the Commission's mining disclosure rules with the CRIRSCO-based codes, which impose a similar written consent requirement.[90]

The proposed requirement that a registrant identify the qualified person that prepared the technical report summary and, if the qualified person is not an employee of the registrant, disclose whether the qualified person or the qualified person's employer is an affiliate would provide investors with relevant information to assess the reliability of the disclosure and align the Commission's mining rules with most of the CRIRSCO-based codes, which impose a similar identification requirement.[91]

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[78] *See* proposed Item 1302(b)(2) of Regulation S–K and discussion in section II.G.2, *infra.*

[79] *See* proposed Item 1302(b)(3) of Regulation S–K.

[80] *See* proposed Item 1302(b)(4) of Regulation S–K.

[81] As used in proposed Item 1302(b), the term "affiliate" has the same meaning as in § 230.405 or § 240.12b–2. *See* the Instruction to proposed Item 1302(b)(4) of Regulation S–K.

[82] *See* proposed Item 1302(b)(4) of Regulation S–K.

[83] See 17 CFR 230.436 and 229.601(b)(23). A registrant would also have to file the written consent as an exhibit to an Exchange Act registration statement or report when the Exchange Act filing is automatically incorporated into a previously filed Securities Act registration statement.

[84] 15 U.S.C. 77k(a)(4).

[85] *See* Securities Act Section 7(a) (15 U.S.C. 77g(a)) and Exchange Act Sections 12(b)(1),)12(g)(1), and 13(a) (15 U.S.C. 78l(b)(1), 78l(g)(1), and 78m(a)).

[86] To the extent that a registrant's determination of mineral resources, mineral reserves and material exploration results is currently based on information and supporting documentation prepared by persons who would be "qualified persons" under the proposed rules, the potential benefits of this requirement could be less. In addition, our proposal presumes that the standards that we have set forth for determining who is a "qualified person," which are consistent with CRIRSCO-based standards, are the appropriate standards. There may be situations when that presumption excludes a person with significant, relevant experience because that person has chosen not to be a member of a recognized professional organization. Despite the professional competency of such person, he or she will not be deemed to be a "qualified person" under the proposed rules.

[87] *See* sections II.D and E, *infra.*

[88] The staff currently has the ability to request a copy of a technical report as supplemental material, where it is deemed appropriate, during the course of its review of a registration statement or report. *See* Securities Act Rule 418 (17 CFR 230.418) and Exchange Act Rule 12b–4 (17 CPR 240.12b–4). Securities Act Rule 418(a)(6) specifically authorizes the staff, "where reserve estimates are referred to in a document," to request "a copy of the full report of the engineer or other expert who estimated the reserves." 17 CFR 230.418(a)(6).

[89] *See, e.g.,* Securities Act Rule 436.

[90] *See, e.g.,* Canada's NI 43–101 pt. 8.3; the JORC Code pt. 9; South Africa's SAMREC Code pt. 8 (2009), which is available at: *http://www.samcode.co.za/downloads/SAMREC2009.pdf*; and the SME Guide pt. 8.

[91] See, *e.g.,* the JORC Code pt. 9; EU's PERC Reporting Standard pt. 9 (2013), which is available

We are not proposing that a qualified person must be independent from the registrant for several reasons. First, we believe that our approach would help to limit the compliance burdens on registrants. Second, we believe that other aspects of the recommended proposals, such as disclosure of the qualified person's credentials and his or her affiliated status with the registrant or another entity having an ownership or similar interest in the subject property, along with the application of potential expert liability in Securities Act filings, should provide adequate safeguards for investors. Finally, as discussed above, our approach is consistent with most of the CRIRSCO-based codes,[92] which permit a qualified person to be an employee or other affiliate of the registrant as long as the registrant discloses its relationship with the qualified person.

Request for Comment

20. Should we require, as proposed, that the determination of mineral resources, mineral reserves and material exploration results, as reported in a registrant's filed registration statements and reports, be based on and accurately reflect information and supporting documentation prepared by a qualified person? Why or why not? Would imposing a qualified person requirement help mitigate the risks associated with including disclosure about a registrant's mineral resources and exploration results in SEC filings, given that mineral resources and exploration results reflect a lower level of certainty about the economic value of mining properties? Why or why not?

21. Should the registrant be responsible for determining that the qualified person meets the qualifications specified under the new subpart's definition of "qualified person" as proposed? Why or why not? If not the registrant, who should be responsible for this determination?

22. Should we, as proposed, require a registrant to obtain a technical report summary from the qualified person, which identifies and summarizes the information reviewed and conclusions reached by the qualified person about the registrant's exploration results, mineral resources or mineral reserves, before it can disclose those results, resources or reserves in SEC filings? Why or why not? Should we instead require a registrant to obtain an unabridged technical report, rather than a technical report summary, before it can disclose exploration results, mineral resources or mineral reserves in SEC filings? Should we require the technical report summary to be dated and signed, as proposed? Why or why not?

23. If we require, as proposed, that a registrant obtain a technical report summary from the qualified person, should we also, as proposed, require that the registrant file the technical report summary as an exhibit to the relevant registrant statement or other Commission filing when one is required? Why or why not?

24. Should we require, as proposed, a registrant to file the technical report summary when the registrant is disclosing mineral reserves, mineral resources or material exploration results for the first time or when there is a material change in the mineral reserves, mineral resources or exploration results from the last technical report filed for the property? Why or why not? Should we instead require a registrant to file the technical report summary more frequently, such as with every Commission filing, or less frequently?

25. Should we require, as proposed, a registrant to obtain the written consent of the qualified person to the use of the qualified person's name and any quotation or other use of the technical report summary in the registration statement or report prior to filing the document publicly with the Commission? Why or why not?

26. Should we require that a registrant identify the qualified person that prepared the technical report summary and disclose whether the qualified person is an employee, as proposed? Why or why not? Should we also require a registrant to name the qualified person's employer if other than the registrant, and disclose whether the qualified person or the qualified person's employer is an affiliate of the registrant or another issuer that has an ownership, royalty or other interest in the property that is the subject of the technical report summary, as proposed? Why or why not?

27. Should we require a registrant to state whether the qualified person is independent of the registrant? Why or why not? If we were to require the registrant to state whether the qualified person is independent of the registrant, should we define "independent" for purposes of that requirement? If so, how? For example, should we base the definition of independence on comparable provisions under Canada's NI 43–101?[93] Similar to the Canadian provisions, should we provide examples of when a qualified person would not be considered to be independent? If so, what examples should we provide? Alternatively, similar to the Commission's rule regarding when an accountant is not independent,[94] should we provide that a qualified person is not independent if the qualified person is not capable of, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the qualified person is not capable of, exercising objective and impartial judgment on all issues encompassed within the qualified person's engagement? Are there any other alternative standards on which we should base a definition of independence for the purpose of the qualified person requirement?

28. Should we require that a registrant's disclosure of exploration results, mineral resources or mineral reserves in a SEC filing be based on the determination of a qualified person that is independent of the registrant? If so, should we impose such a requirement only under certain circumstances, such as when the filing discloses resources or reserves by the registrant for the first time; a material change in previously disclosed resources or reserves that has occurred or is likely to occur; or a 100% or greater change in the total mineral

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at: *http://www.vmine.net/PERC/documents/PERC_REPORTING_STANDARD_2013_rev2.pdf*. A limited exception to this is Canada, which requires a registrant to file a technical report summary prepared by an independent qualified person in certain circumstances: When becoming a first-time registrant; when supporting the first time reporting of mineral resources, mineral reserves, or a preliminary economic assessment of a material property; or when reporting a 100% or greater change in the total mineral resources or reserves on a material property, when compared to the last disclosure. *See* NI 43–101 pt. 5.3.

[92] *See Id.*

[93] Pt. 1.5 of Canada's NI 43–101 provides that a "qualified person is independent of an issuer if there is no circumstance that, in the opinion of a reasonable person aware of all relevant facts, could interfere with the qualified person's judgment regarding the preparation of the technical report." Pt. 1.4 of NI 43–101 (CP) then provides guidance regarding when a qualified person would not be considered to be independent: "We consider a qualified person is not independent when the qualified person (a) is an employee, insider, or director of the issuer; (b) is an employee, insider, or director of a related party of the issuer; (c) is a partner of any person or company in paragraph (a) or (b); (d) holds or expects to hold securities, either directly or indirectly, of the issuer or a related party of the issuer; (e) holds or expects to hold securities, either directly or indirectly, in another issuer that has a direct or indirect interest in the property that is the subject of the technical report or in an adjacent property; (f) is an employee, insider, or director of another issuer that has a direct or indirect interest in the property that is the subject of the technical report or in an adjacent property; (g) has or expects to have, directly or indirectly, an ownership, royalty, or other interest in the property that is the subject of the technical report or an adjacent property; or (h) has received the majority of their income, either directly or indirectly, in the three years preceding the date of the technical report from the issuer or a related party of the issuer."

[94] *See* Rule 2.01(b) of Regulation S–X (17 CFR 210.2–01(b)).

resources or reserves on a material property, when compared to the last disclosure? In each case, why or why not?

29. Alternatively, rather than requiring the qualified person to be independent, should we require, when the qualified person is affiliated with the registrant or another entity having an ownership or similar interest in the property, that a person independent of the registrant and qualified person review the qualified person's work? If so, what qualifications should the independent reviewer possess? If we require an independent review when the qualified person is affiliated with the registrant, should the review be for all disclosures of mineral resources, mineral reserves and material exploration results, or only those that are related to material properties? Should this review be required only in certain circumstances, such as when the filing discloses resources or reserves by the registrant for the first time; a material change in previously disclosed resources or reserves that has occurred or is likely to occur; or a 100% or greater change in the total mineral resources or reserves on a material property, when compared to the last disclosure? Should we instead adopt an independent review requirement for the work of an affiliated qualified person in all circumstances? In each case, why or why not?

30. Should we require the registrant to disclose any material conflicts of interest that could reasonably affect the judgment or decision making of the qualified person, such as material ongoing business relationships between the registrant and the qualified person or the qualified person's employer?

31. Would the proposed technical report summary filing requirement impose a significant burden on registrants? If so, which registrants and why? Are there changes that we could make to this proposed requirement to alleviate any such burden?

2. The Definition of "Qualified Person"

We are proposing to define a "qualified person" as a person who is a mineral industry professional with at least five years of relevant experience in the type of mineralization and type of deposit under consideration and in the specific type of activity that person is undertaking on behalf of the registrant. In addition, in order to be a qualified person, a person must be an eligible member or licensee in good standing of a recognized professional organization at the time the technical report is prepared.[95]

For an organization to be a "recognized professional organization," it must be either recognized within the mining industry as a reputable professional association,[96] or be a board authorized by U.S. federal, state or foreign statute to regulate professionals in the mining, geoscience or related field. Furthermore, the organization must:

- Admit eligible members primarily on the basis of their academic qualifications and experience;
- establish and require compliance with professional standards of competence and ethics;
- require or encourage continuing professional development;
- have and apply disciplinary powers, including the power to suspend or expel a member regardless of where the member practices or resides; and
- provide a public list of members in good standing.[97]

This proposed definition is similar to the definition of competent or qualified person under the CRIRSCO-based codes.[98] It differs, however, from those codes in at least one respect. Although CRIRSCO provides some guidance about what constitutes a "recognized professional organization,"[99] most of the CRIRSCO-based codes require that a competent or qualified person be a member of one or more "approved" organizations identified in an appendix to the code.[100] This list is updated periodically by the various code regulators.

In contrast, our proposed definition is more flexible while still providing assurance that the qualified person has the appropriate level of professional expertise to support disclosure of exploration results, mineral resources, or mineral reserves. Although this flexible approach would require registrants to exercise some judgment as to the qualified person's credentials, we believe it is a better option than requiring the person to be a member of one of several specifically identified organizations, as is the case under most of the CRIRSCO-based codes. Although the "approved organization" approach may be initially easier to apply, it could also become outdated as circumstances change. This could adversely impact the quality of disclosure. In contrast, our principles-based approach would provide flexibility to allow for ease of compliance and protection of investors.

As discussed above, an organization that is recognized "within the mining industry as a reputable professional association," can be, if all the other conditions are satisfied, a "recognized professional organization." We are not, however, proposing any specific factors that would indicate that a professional association is reputable. We are instead seeking comment on what factors we should consider, and whether such factors should be incorporated into the final rules. Examples could include the frequency and quality of an association's peer-reviewed publications, the number and global distribution of its members, and whether and to what extent the association publishes guides or standards that are accepted and used in the industry.

Regarding the minimum experience requirement, we believe five years would be an appropriate time frame to use for purposes of the definition of a qualified person. It ensures a prolonged period of professional experience without unduly restricting the pool of qualified experts. Furthermore, it is an accepted industry standard found in the corresponding definitions under the CRIRSCO-based codes.[101]

To assist registrants in applying the "qualified person" definition, we are also proposing detailed instructions to the definition of "qualified person."[102] The instructions describe the specific types and amount of experience necessary for various types of mining activities and mineral deposits. For example, if the qualified person is preparing or supervising the preparation of a technical report concerning exploration results, the relevant experience must be in exploration. If the qualified person is estimating, or supervising the estimation of, mineral resources, the relevant experience must be in the estimation, assessment and evaluation of mineral resources and associated modifying factors.[103] Similarly, if the qualified person is estimating, or supervising the estimation of, mineral reserves, the relevant experience must be in engineering and other disciplines required for the estimation, assessment, evaluation and economic extraction of mineral reserves.[104]

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[95] *See* proposed Item 1301(d)(22) of Regulation S–K.

[96] This standard is also used in Canada's NI 43–101, although that instrument does not provide factors to assess when determining which organizations are reputable. *See* the definition of "professional association" in NI 43–101 pt. 1.1.

[97] *See* proposed Item 1301(d)(22) of Regulation S–K.

[98] The CRIRSCO standards require that a competent or qualified person have at least five years of relevant experience "in the style of mineralization and type of deposit under consideration and in the activity which that person is undertaking" and be a member or licensee in good standing of a recognized professional organization. *See* CRIRSCO's International Reporting Template pt. 11; *see also* the JORC Code pt. 11; the SAMREC Code pt. 10; the SME Guide pt. 9; and the PERC Reporting Standard pt. 10. The recognized professional organizations under CRIRSCO standards have and apply disciplinary powers to member classes eligible to serve as qualified persons and most require professional development to maintain such membership.

[99] *See* CRIRSCO's International Reporting Template pt. 11.

[100] *See, e.g.,* the JORC Code pt. 11; the SAMREC Code pt. 9; the SME Guide pt. 9; and the PERC Reporting Standard pt. 10.

[101] *See, e.g.,* NI 43–101 pt. 1.1, JORC pt. 11, CRIRSCO Template pt. 11, and SAMREC pt. 10.

[102] *See* the proposed instructions to paragraph (d)(22) of Item 1301.

Pursuant to the proposed instructions, a qualified person must also have relevant experience in evaluating the specific type of mineral deposit under consideration (*e.g.,* coal, metal, base metal, industrial mineral, mineral brine, or geothermal fields). What constitutes relevant experience in this regard is a facts and circumstances determination. For example, experience in a high-nugget, vein-type mineralization such as tin or tungsten would likely be relevant experience for estimating mineral resources for vein-gold mineralization whereas experience in a low grade disseminated gold deposit likely would not be relevant.[105]

The proposed instructions would further state that it is not always necessary for a person to have five years' experience in each and every type of deposit in order to be an eligible qualified person if that person has relevant experience in similar deposit types. For example, a person with 20 years' experience in estimating mineral resources for a variety of metalliferous hard-rock deposit types may not require as much as five years of specific experience in porphyry-copper deposits to act as a qualified person. Relevant experience in the other deposit types could count towards the experience in relation to porphyry-copper deposits.[106]

In addition to experience in the specific type of mineralization, if the qualified person is engaged in evaluating exploration results or preparing mineral resource estimates, the proposed instructions would require the qualified person to have sufficient experience with the sampling and analytical techniques, as well as extraction and processing techniques, relevant to the mineral deposit under consideration. As proposed, sufficient experience would mean that level of experience necessary to be able to identify, with substantial confidence, problems that could affect the reliability of data and issues associated with processing.[107]

For a qualified person applying the modifying factors to convert mineral resources to mineral reserves, the proposed instructions would require that the person must have both sufficient knowledge and experience in the application of these factors to the mineral deposit under consideration and experience with the geology, geostatistics, mining, extraction and processing that is applicable to the type of mineral and mining under consideration.[108]

These detailed instructions would help ensure that the qualified person has the appropriate level of experience for both the type of activity involved and the type of mineral deposit under consideration to make accurate assessments about the registrant's exploration results, mineral resources and mineral reserves. At the same time, we believe that the proposed definition of "qualified person," taken together with the proposed instructions, would assist registrants in applying this definition and would provide sufficient flexibility in terms of the required level of experience and professional standing. Moreover, because the CRIRSCO-based codes provide similar guidance for the type of experience required for a competent or qualified person, the proposed definition should not significantly alter existing disclosure practices for registrants subject to those codes.[109]

Request for Comment

32. Should we define a qualified person in part to be a mineral industry professional with at least five years of relevant experience in the type of mineralization, as described here and in the proposed rule, and type of deposit under consideration and in the specific type of activity that person is undertaking on behalf of the registrant, as proposed? Why or why not? Should we specify the particular type of professional, such as a geologist, geoscientist or engineer, required under the definition? The years of experience required under the proposed definition is consistent with the CRIRSCO-based codes. Is five years the appropriate number of years to constitute the minimum amount of relevant experience required under the definition in our rules? Should we require a lesser or greater number of years of relevant experience (*e.g.,* 3, 7, or 10 years)?

33. Should we define a qualified person to be an individual, as proposed? Or should we expand the definition, in cases where the registrant engages an outside expert, to include legal entities, such as an engineering firm licensed by a board authorized by U.S. federal, state or foreign statute to regulate professionals in mining, geosciences or related fields? Why or why not? If we expand the definition in this manner, should the firm or the responsible individual sign the technical report summary and provide the required written consent? Similarly, what professional experience should be required and how would a firm satisfy the professional experience requirement? Should we adopt qualified person requirements for firms that are different than the proposed requirements for individual qualified persons? If so, what should these requirements be?

34. Do the proposed instructions provide the appropriate guidance for what may constitute the requisite relevant experience in the particular activity involved and in the particular type of mineralization and deposit under consideration? Is there different or additional guidance that we should provide in this regard?

35. Should we define a qualified person in part to be an eligible member or licensee in good standing of a recognized professional organization at the time the technical report is prepared, as proposed? Why or why not? Should we require an organization

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[103] The term "modifying factors" is defined in proposed Item 1301(d)(15) of Regulation S–K. They are the factors that a qualified person would be required to apply to mineralization or geothermal energy and then evaluate in order to establish the economic prospects of mineral resources, or the economic viability of mineral reserves. These factors include, but are not restricted to, mining, energy recovery and conversion, processing, metallurgical, economic, marketing, legal, environmental, infrastructure, social and governmental factors. *See* section II.F.1, *infra,* for a discussion of the proposed definition of modifying factors. Under the proposed rules, a qualified person would have to evaluate qualitatively the modifying factors to demonstrate "reasonable prospects for economic extraction" when determining mineral resources, but need not undertake the quantitative assessment to establish "economic viability" required for mineral reserve determination.

[104] *See* Instruction 1 to proposed Item 1301(d)(22).

[105] *See* Instruction 2 to proposed Item 1301(d)(22).

[106] *See* Instruction 3 to proposed Item 1301(d)(22).

[107] *See* Instruction 4 to proposed Item 1301(d)(22).

[108] *See* Instruction 5 to proposed Item 1301(d)(22).

[109] *See, e.g.*, the Canadian Institute of Mining, Metallurgy and Petroleum Definition Standards-For Mineral Resources and Mineral Reserves ("CIM Definition Standards") 2 (2010), which is available at: *http://web.cim.org/standards/MenuPage.cfm?sections=177&menu=178*; the JORC Code pt. 11; the SAMREC Code pt. 10; the PERC Reporting Standard pt. 10; and the SME Guide pt. 9.

to meet the six criteria specified in the proposed definition in order to be a recognized professional organization, as proposed? Should the definition of a qualified person take into account whether, and the extent to which, a person has been disciplined by their professional organization? If so, how? Should the definition specify that the organization must require, rather than require or encourage, continuing professional development? Are there different or additional criteria that we should require for an organization to be a recognized professional organization?

36. What factors should we consider in determining whether a professional association is recognized as reputable with regards to the definition of a recognized professional organization? Are the examples we provided appropriate factors for determining whether a professional association is recognized as reputable or are other factors more appropriate? Should any of these factors be incorporated into the final rules?

37. Instead of the proposed flexible approach, should we require that a qualified person be a member of an approved organization listed in an appendix to the mining disclosure rules or in a document posted on the Commission's Web site? If so, how should the Commission determine which organizations to approve and how frequently should the Commission update the approved organization list?

38. Should we, as proposed, require a registrant to disclose the recognized professional organization(s) that the qualified person is a member of, and confirm that the qualified person is a member in good standing of the organization(s)?

39. Are there different or additional conditions that a person should have to satisfy in order to meet the definition of qualified person? For example, should we require that a person have attained a particular level of formal education (bachelor's degree, master's degree, or doctorate) in order to be a qualified person? If so, what level of education would be appropriate? Would such a minimum education requirement disqualify a significant percentage of persons from being considered as qualified persons who otherwise possess the requisite relevant experience?

40. Is the definition of qualified person too restrictive, thus increasing the cost and difficulty associated with finding a qualified person? Alternatively, should the definition be more restrictive, to help ensure a qualified person has an appropriate level of training and expertise? In either case, why?

41. Instead of prescribing qualifications for the qualified person, should we instead require a registrant to provide detailed disclosure regarding the qualifications of the individual who prepared the technical report summary? Why or why not?

D. Treatment of Exploration Results

Neither Guide 7 nor Item 102 addresses the disclosure of exploration results in Commission filings.[110] In contrast, the CRIRSCO-based codes require the disclosure of material exploration results, which are defined as data and information generated by mineral exploration programs that might be of use to investors but which do not form part of a disclosure of mineral resources or mineral reserves.[111]

We are proposing to require that a registrant disclose material exploration results for each of its material properties.[112] Similar to the CRIRSCO-based codes, we propose to define exploration results as data and information generated by mineral exploration programs (*i.e.*, programs consisting of sampling, drilling, trenching, analytical testing, assaying, and other similar activities undertaken to locate, investigate, define or delineate a mineral prospect or mineral deposit) that are not part of a disclosure of mineral resources or reserves.[113] A proposed instruction would explain that when determining whether exploration results are material, a registrant should consider their importance in assessing the value of a material property or in deciding whether to develop the property.[114] This instruction is consistent with the purpose of exploration activity, which is to determine whether a mining property contains a deposit that is economically viable and worth developing or to reduce the uncertainty surrounding that determination.[115] Prior to establishing the economic viability to an acceptable degree of certainty, exploration results are also used to assess the potential value of the property.[116] Hence, we believe that when determining whether exploration results are material, registrants should consider how the exploration results affect the valuation of a property or the decision to develop the property.

The proposed rules would preclude the use of exploration results, by themselves, to derive estimates of tonnage, grade, and production rates, or in an assessment of economic viability[117] because of the level of risk associated with exploration results. Exploration results, by themselves, are inherently speculative in that they do not include an assessment of geologic and grade or quality continuity and overall geologic uncertainty. Therefore, we believe exploration results are insufficient to support disclosure of estimates of tonnage, grade, or other quantitative estimates. Tonnage and grades should only be part of mineral resource and reserve estimates, which must include an assessment of geologic and grade or quality continuity and overall geologic uncertainty.[118]

Despite these limitations, we believe that disclosure of material exploration results would provide investors with a more comprehensive picture of a registrant's mining operations and help them make more informed investment decisions. A company engaged in mining activities frequently uses exploration results, prior to a determination of mineral resources, to assess the economic potential of its property as part of its decision to develop a property. In addition, a company uses exploration results to determine whether mineral resources exist and to estimate the mineral resources. To the extent that mineral resources (and mineral reserves estimated from them) on a particular property are material, depending on the facts and circumstances, the exploration results that led to the estimation of those mineral resources could also be material. For example, exploration results that have significantly impacted the registrant's analysis or estimates of the life of a material mining project would be considered material, thus triggering a disclosure obligation.

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[110] Accordingly, the staff does not request disclosure of exploration results. If a registrant voluntarily provides exploration results, the staff will review, and if appropriate, issue comments on, such disclosure.

[111] *See, e.g.*, the JORC Code pts. 17, 20 and 31; the SAMREC Code pts. 18–19; the PERC Reporting Standard pts. 16–18; and the SME Guide pts. 17, 20 and 31.

[112] *See* proposed Item 1304(b)(6) of Regulation S–K.

[113] *See* proposed Item 1301(d)(4) of Regulation S–K.

[114] *See* proposed Instruction to Item 1304(b)(6) of Regulation S–K.

[115] *See, e.g.*, José L. Lee-Moreno, "Mineral Prospecting and Exploration," in 1 *SME Mining Engineering Handbook* 105 (P. Darling, ed., 2011), which states that "[t]he main objective of minerals exploration is to locate ore deposits, which are anomalous accumulations of one or more minerals that can be mined at a profit."

[116] It is accepted industry practice that the presence of mineralization and indications of exploration potential are factors in valuation of mining properties. *See, e.g.*, Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports ("the VALMIN Code") pt. 74–79 (2005). Also, relevant accounting principles require valuation to include consideration of the so-called "value beyond proven and probable," which includes exploration potential. *See* FASB ASC 930–360 and 930–805 (formerly Emerging Issues Task Force, Fin. Accounting Standards Bd.), EITF Abstracts: Mining Assets: Impairment and Business Combinations, Issue No. 04–3 (Mar. 17–18, 2004), which is available at: *http://www.fasb.org/pdf/abs04-3.pdf.*

[117] *See* proposed Item 1301(d)(4) of Regulation S–K.

[118] Similar restrictions on the use of exploration results exist in the CRIRSCO-based codes. *See, e.g.*, CRIRSCO Template pt. 18, which states that "[i]t should be made clear in public reports that contain Mineral Exploration Results that it is inappropriate to use such information to derive estimates of tonnage and grade." *See also* SME Guide pt. 31 and JORC Code pt. 18.

Requiring the disclosure of material exploration results would align our disclosure rules with most foreign mining codes,[119] which would help to provide for a consistent level of mining disclosure across relevant jurisdictions. We believe that the potential risk associated with the uncertainty inherent in exploration results would be mitigated by precluding the use of exploration results alone, without due consideration of geologic uncertainty and economic prospects, to serve as a basis for disclosure of tonnage, grade, and production rates, or in an assessment of economic viability.

At this time, we are not proposing to require the disclosure of exploration results by a registrant that has material mining operations in the aggregate but no individual properties that are material.[120] If a company has determined that it lacks material mining properties, we believe it is unlikely that such a company would have exploration results that are material. While a company with no material properties could voluntarily elect to disclose exploration results for its properties, we do not believe investors would benefit from a requirement to disclose exploration results under those circumstances.

Request for Comment

42. Should we require a registrant to disclose material exploration results for each of its material properties, as proposed? Why or why not? Alternatively, should we permit registrants to provide exploration results in a summary form?

43. Should we define exploration results as data and information generated by mineral exploration programs (*i.e.*, programs consisting of sampling, drilling, trenching, analytical testing, assaying, and other similar activities undertaken to locate, investigate, define or delineate a mineral prospect or mineral deposit) that do not form part of a disclosure of mineral resources or reserves, as proposed? Why or why not? Are there other characteristics that we should include in the definition of exploration results? Are there other activities that we should include as examples of mineral exploration programs? Are there activities that we should exclude as examples of mineral exploration programs?

44. What are the risks that could result from requiring disclosure of material exploration results? Should we prohibit the use of exploration results to derive estimates of tonnage, grade, and production rates, or in an assessment of economic viability, as proposed? Why or why not? Would prohibiting the use of exploration results for these purposes, as proposed, adequately protect investors from the increased risk associated with including information having a lower level of certainty about the economic value of mining properties?

45. When determining whether exploration results are material, should a registrant consider their importance in assessing the value of a material property or in deciding whether to develop the property, as proposed? Why or why not? Are there other circumstances that would better define when exploration results are material? If so, what are those circumstances?

46. We are proposing to require the disclosure of material exploration results for each material property. Should we also require disclosure of material exploration results when the registrant has determined that it has in the aggregate material mining operations but no individual properties are material? Would disclosure of material exploration results for its properties in the aggregate (when none is individually material) provide additional meaningful disclosure for investors? If so, how should a registrant disclose such exploration results? Should it provide such results in summary form? Or should it provide detailed disclosure about all material exploration results for all of its properties?

E. Treatment of Mineral Resources

The determination of mineral resources is the second step, after mineral exploration, that geoscientists and engineers use to assess the value of a mining property.[121] Most foreign mining codes require the disclosure of material mineral resources.[122] In contrast, Item 102 and Guide 7 preclude the disclosure of mineral resources in Commission filings (subject to the "foreign or state law" exception discussed above).[123] According to some industry groups,[124] this restriction has limited the completeness and relevance of SEC filings.

We are proposing to require a registrant with material mining operations to disclose specified information in its Securities Act and Exchange Act filings concerning any mineral resources, as defined in the proposed rules, that have been determined based on information and supporting documentation from a qualified person. As proposed, a registrant with material mining operations that has multiple properties would have to provide both summary disclosure about its mineral resources and more detailed disclosure concerning its mineral resources for each material property.[125]

Under the proposed rules, a registrant could not disclose that it has determined that a mineral deposit constitutes a "mineral resource" (or, for that matter, a "mineral reserve") unless that determination is based upon information and supporting documentation[126] prepared by a qualified person. Nevertheless, there would be no requirement that a registrant make such an affirmative determination. For example, a registrant could choose not to engage a qualified person to conduct the analyses and prepare the documentation necessary to support a determination that a mineral deposit is a mineral resource (or reserve). In that case, under the proposed rules, in the absence of such information and supporting documentation, the registrant would be deemed not to have any mineral resources, and as such, would not be required to disclose mineral resources in a filing. If, however, the registrant did make the determination that it had mineral resources based upon information and supporting documentation prepared by a qualified person (*e.g.*, as part of its efforts to attract investors or secure project financing), then under the proposed rules the registrant would be required to disclose such mineral resources. This approach is consistent with the CRIRSCO-based codes.[127]

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[119] *See* note 111, supra.

[120] An example of such a registrant would be an industrial minerals company that has more than 50 properties none of which is individually material. Under the proposed rules, such a company would be required to provide summary disclosure concerning its mineral resources and mineral reserves. *See* section II.G.1, *infra.*

[121] First, they use the exploration results to determine if a mineral deposit is present. Next, they estimate the mineral resources, which are the portions of the mineral deposit that have prospects of economic extraction. The last step is the determination of mineral reserves, which are the economically mineable portions of the mineral resources.

[122] *See, e.g.*, the JORC Code pts. 4 and 14; the SAMREC Code pts. 4 and 14; the SME Guide pts. 3 and 20; and the PERC Reporting Standard pts. 4 and 13.

[123] *See* Instruction 3 to paragraph (b)(5) of Guide 7 and Instruction 5 to Item 102 of Regulation S–K.

[124] *See* the SME Petition for Rulemaking at 1.

[125] *See* sections II.G.1 and II.G.2, *infra*, respectively, for a discussion of the proposed summary and individual property disclosure requirements for mineral resources and reserves.

[126] As discussed in sections II.E.3 and II.F.2, *infra*, by "information and supporting documentation," we mean an initial assessment for mineral resource determination and a preliminary or final feasibility study for mineral reserve determination.

Requiring a mining registrant with material mining operations to disclose mineral resources in addition to mineral reserves would provide investors with additional important information concerning the registrant's operations and prospects. The importance of this information is demonstrated by the fact that most foreign mining codes require the disclosure of mineral resources, U.S. registrants routinely disclose mineral resource information on their Web sites, and many mining company analysts consider mineral resource information as an important factor in their valuations and recommendations. Requiring the disclosure of mineral resources would also place U.S. registrants on a level playing field with Canadian mining registrants and non-U.S. mining companies that are subject to one or more of the other CRIRSCO-based mining codes.

Requiring disclosure of mineral resources in Commission filings could increase the reporting costs for those mining companies that do not currently disclose mineral resource information. We believe, however, that any such increase would be minimal as most mining companies already assess mineral resources in order to determine reserves.[128] Requiring the disclosure of mineral resources could also increase the possibility that investors may misunderstand the economic value of a mining company, given that mineral resources are less certain than mineral reserves. As explained below, however, we believe that this risk is limited by the proposed definition of the term mineral resource, by requiring disclosure of the particular class of mineral resource, and by requiring an initial assessment for mineral resource disclosure. We also believe that there are potential benefits to investors from the disclosure of mineral resources, including more comprehensive and potentially more accurate disclosure of mineral reserves.[129]

As previously noted, Item 102 and Guide 7 preclude the disclosure of estimates other than reserves in SEC filings unless such information is required to be disclosed by foreign or state law. Since we are proposing to require the disclosure of estimates for mineral resources in addition to mineral reserves by a registrant with material mining operations, the foreign or state law exception would no longer be necessary. Therefore, the proposed rules would eliminate this exception.

Request for Comment

47. Should we require a registrant with material mining operations to disclose mineral resources in addition to mineral reserves, as proposed? Why or why not?

48. What are the risks that could result from requiring a registrant with material mining operations to disclose its mineral resources? How could the Commission mitigate those risks?

49. Under the proposed rules, a registrant with material mining operations could choose not to engage a qualified person to determine whether a mineral deposit is a mineral resource, with the result that the registrant would not be required to disclose mineral resources that may exist. Should the rules, as proposed, preclude a registrant from disclosing mineral resources in an SEC filing if it has elected not to engage a qualified person to make the resource determination? Alternatively, should the rules permit a registrant to disclose mineral resources in an SEC filing, despite not having engaged a qualified person to make the resource determination, in certain instances? If so, in what instances would it be appropriate to permit such disclosure?

1. Mineral Resource Definition

Because both Item 102 and Guide 7 prohibit the disclosure of non-reserve estimates except as required under foreign or state law, there currently is no Commission definition of "mineral resource." The proposed rules would define "mineral resource" as a concentration or occurrence of material of economic interest in or on the earth's crust in such form, grade or quality, and quantity that there are reasonable prospects for its economic extraction.[130] The proposed rules would define the term "material of economic interest," as used in the definition of mineral resource, to include mineralization, including dumps and tailings,[131] geothermal fields, mineral brines, and other resources extracted on or within the earth's crust. As proposed, the term "material of economic interest" would not include oil and gas resources as defined in Regulation S–X,[132] gases (*e.g.* helium and carbon dioxide), or water.[133]

The proposed rules would further specify that, when determining the existence of a mineral resource, a qualified person must be able to estimate or interpret the location, quantity, grade or quality continuity, and other geological characteristics of the mineral resource from specific geological evidence and knowledge, including sampling.[134] In addition, when determining the existence of a mineral resource, as proposed, the qualified person must conclude that there are reasonable prospects for economic extraction of the mineral resource based on an initial assessment that he or she conducts by qualitatively applying the modifying factors[135] likely to influence the prospect of economic extraction.[136]

Similar to the CRIRSCO-based codes, the proposed definition of mineral resource would state that it is not to be merely an inventory[137] of all mineralization drilled or sampled.[138] A mineral resource is instead a reasonable estimate of mineralization, taking into account relevant factors such as cut-off grade,[139] likely mining dimensions, location or continuity, which, with the assumed and justifiable technical and economic conditions, is likely to, in whole or in part, become economically extractable.[140]

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[127] Similarly, the other significant mining jurisdictions do not require a registrant to make the determination that it has mineral resources or reserves, as defined by those codes. The regulatory frameworks do, however, require disclosure of mineral resources and mineral reserves once the registrant has made the determination that it has them and they are material. *See, e.g.*, ASX Listing Rules 5.7, 5.8, and 5.9, which provide guidance for disclosure of exploration results, mineral resources and mineral reserves for "material mining projects," and which are available at: *http://www.asx.com.au/documents/rules/Chapter05.pdf*.

[128] Best practice in mining engineering is to first determine the quantity and quality of the material of economic interest (*i.e.*, mineral resource estimation), prior to engineering and economic evaluation, to determine if any or all of that material can be extracted economically (*i.e.*, mineral reserve estimation). *See, e.g.*, Alan C. Noble, "Mineral Resource Estimation," in 1 *SME Mining Engineering Handbook* 203 (P. Darling, ed., 2011), which states "[t]he ore reserve estimate follows the resource estimate."

[129] Given that mineral reserves estimates are based on estimates of mineral resources, we believe that the rigor surrounding the disclosure of mineral resources as well as the attendant scrutiny from the qualified person, particularly with regards to mineral resource classification, is likely to lead to more reliable mineral reserves disclosure.

[130] *See* proposed Item 1301(d)(14)(i) of Regulation S–K.

[131] The term "dumps" refers to stockpiles of mined material. The term "tailings" refers to a mixture of fine mineral matter and process effluents generated by mineral processing plants.

[132] *See* 17 CFR 210.4–10(a)(16)(D).

[133] *See* proposed Item 1301(d)(14)(ii) of Regulation S–K.

[134] *See* proposed Item 1301(d)(14)(iii)(A) of Regulation S–K.

[135] *See* proposed Item 1301(d)(15) of Regulation S–K for the definition of modifying factors.

[136] *See* proposed Item 1301(d)(14)(iii)(B) of Regulation S–K.

[137] The term "inventory of mineralization" means an estimate of the total quantity of mineralization based on the available evidence.

As proposed, the definition of mineral resource would include non-solid matter, such as geothermal fields and mineral brines, in addition to mineralization. We believe this is appropriate because the scientific and engineering principles used to characterize mineral brine and geothermal resources and reserves are substantially similar to those used to characterize solid mineral resources and reserves. By definition, extracting minerals from mineral brines is mining.[141] Although extracting energy from geothermal fields in the earth's crust is not identical to extracting minerals, we believe there are sufficient similarities to justify including geothermal energy in the proposed rules. For example, the exploration and development techniques leading to geothermal extraction are similar to the techniques used for mineral extraction. Also, the extraction of fluid in geothermal fields is similar to in-situ solution mining.[142] In addition, mineral resource classification frameworks are widely accepted as appropriate for geothermal resource disclosure.[143]

As such, we believe that including these non-solid materials in the proposed definition of mineral resource would provide a workable and reasonable framework for disclosure related to these activities. Moreover, including minerals extracted from mineral brines and energy extracted from geothermal fields within the definition should provide clarity and consistency for the disclosure obligations of registrants engaged in these activities.

The proposed definition of "mineral resource" also would include dumps and tailings in recognition of the fact that, under certain circumstances, these byproducts from older mining operations possess value. We also note that the inclusion of dumps and tailings in the definition of mineral resource reflects industry practice and is consistent with the CRIRSCO-based codes.[144]

We are proposing to exclude oil and gas resources as defined by Regulation S–X from the definition of mineral resource because the Commission has adopted separate rules for oil and gas disclosure.[145] We are proposing to exclude gases (such as helium and carbon dioxide) and water because the scientific and engineering principles used to estimate these resources are substantially different from those used to estimate mineral resources.

As noted above, we are proposing to require that in order to classify a deposit as a resource, a qualified person must establish that there are reasonable prospects of economic extraction by estimating or interpreting key geological characteristics from specific geological evidence. We believe that requiring an analysis based on specific geological evidence to establish prospects of economic extraction would provide an appropriately exacting standard, and importantly, one that is more exacting than what we propose to require for the disclosure of exploration results. A qualified person should have a higher level of confidence to determine that a deposit is properly classified as a mineral resource (which is an estimate of tonnage and grade that has prospects of economic extraction) than to report exploration results (which may not indicate the existence of any tonnage with reasonable prospects of economic extraction) because of the relatively greater weight that investors are likely to place on estimates of mineral resources. This in turn should help mitigate the uncertainty inherent in the determination of mineral resources. Moreover, because the CRIRSCO-based codes impose a substantially similar requirement, we do not believe this aspect of the proposed definition of mineral resources would significantly alter existing disclosure practices of registrants subject to these codes.

Request for Comment

50. Should we define the term "mineral resource," as proposed? Why or why not? In order for material to be classified as a mineral resource, should there be reasonable prospects for its economic extraction, as proposed? Why or why not?

51. Should the definition of mineral resource include mineralization, including dumps and tailings, as proposed? Should the definition of mineral resource also include geothermal fields and mineral brines, as proposed? Why or why not? Is there any other material that should be explicitly included in the definition of mineral resource?

52. Should the definition of mineral resource exclude oil and gas resources as defined in Regulation S–X,[146] gases (*e.g.*, helium and carbon dioxide), and water, as proposed? Why or why not? Is there any other material that should be explicitly excluded from the definition of mineral resource?

53. Should the definition of mineral resource include the requirement that a qualified person estimate or interpret the location, quantity, grade or quality continuity, and other geological characteristics of the mineral resource from specific geological evidence and knowledge, including sampling, as proposed? Why or why not? Are there other geological characteristics that we should explicitly require a qualified person to estimate or interpret when determining the existence of mineral resources?

2. Mineral Resource Classification

The proposed rules would adopt the CRIRSCO-based classification of mineral resources [147] into inferred, indicated and measured mineral resources, in order of increasing geological confidence,[148] and define those terms. Further, the proposed rules would require a registrant with material mining operations to classify its mineral resources into inferred, indicated and measured mineral resources, in order of increasing confidence based on the level of underlying geological evidence. We believe this classification requirement would contribute to the accuracy of a registrant's mining disclosure in SEC filings, and thereby benefit investors, because it is based upon an assessment of "geologic uncertainty," which is the risk related to the quality, quantity and location of the mineral in the ground. Geologic uncertainty directly impacts two very significant estimates, production quantities per period and related cash flows, which are crucial to a registrant's determination, and an investor's understanding, of mineral resource disclosure. We, therefore, believe that the proposed rules should require, and not merely allow, the classification of mineral resources.

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[138] *See, e.g.*, JORC Code pt. 20; CRIRSCO International Reporting Template pt. 21; and SAMREC Code pt. 21.

[139] The term cut-off grade refers to the grade (the concentration of metal or mineral in rock) at which the destination of the material changes during mining. For establishing prospects of economic extraction, it is the grade that distinguishes between the material that is uneconomic and the material that is economic and therefore going to be mined and processed. Terms with similar meanings include net smelter return, pay limit and break-even stripping ratio. *See* Proposed Item 1301(d)(1) of Regulation S–K.

[140] *See* Note to proposed Item 1301(d)(14)(i) of Regulation S–K.

[141] Mining can be defined as the "[p]rocess of obtaining useful minerals from the earth's crust." Lewis & Clark, *Elements of Mining* 20 (1964). Although the CRIRSCO-based codes define a mineral resource as "solid material" (*see, e.g.*, the CIM Definition Standards at 4 and the JORC code pt. 20), most of those codes regulate the mining of mineral brines under the same set of rules governing a mineral resource. *See e.g.*, Ontario Securities Commission (OSC) Notice 43–704, *Mineral Brine Projects and National Instrument 43–101 Standards of Disclosure for Mineral Projects* (July 22, 2011).

[142] In-situ solution mining is the selective dissolution and recovery of a target mineral by dissolving the mineral in its original location and pumping the mineral-laden solution to a processing plant located on the surface, where the desired metals are produced for market. The solution that dissolves the target mineral is pumped into the rock via injection wells and the mineral-laden solution is recovered via production wells. Similarly, extracting energy from geothermal fields involves pumping fluids in and out of geologic material.

[143] For example, the Australian Geothermal Energy Association's Geothermal Code Committee concluded that JORC was a better model for the Australian Geothermal Reporting Code than the Society of Petroleum Engineers' Resources Management System. *See* J.V. Lawless, M. Ward and G. Beardsmore, "The Australian Code for Geothermal Reserves and Resources Reporting: Practical Experience," in *Proceedings of the World Geothermal Congress* (2010).

[144] *See, e.g.*, the JORC Code pt. 20, the SAMREC Code pt. 21, and the SME Guide pt. 33.

[145] *See* subpart 1200 of Regulation S–K (17 CFR 230.1201 *et seq.*).

[146] *See* 17 CFR 210.4–10(a)(16)(D).

Similar to the CRIRSCO-based codes,[149] we propose to define "inferred mineral resource" as that part of a mineral resource for which quantity and grade or quality are estimated on the basis of limited geological evidence and sampling.[150] The proposed rules would explain that, as used in this proposed definition, "limited geological evidence" means evidence that is only sufficient to establish that geological and grade or quality continuity is more likely than not. The proposed rules would further provide that the level of geological uncertainty associated with an inferred mineral resource is too high to apply modifying factors in a manner useful for evaluation of economic viability.[151] Because an inferred mineral resource has the lowest level of geological confidence of all mineral resources, under the proposed rules, it may not be considered when assessing the economic viability of a mining project and may not be converted to a mineral reserve.[152]

The proposed rules would establish the level of certainty that a qualified person must strive to achieve when determining the existence of an inferred mineral resource. First, the qualified person must have a reasonable expectation that the majority of inferred mineral resources could be upgraded to indicated or measured mineral resources with continued exploration. Second, the qualified person should be able to defend the basis of this expectation before his or her peers.[153]

We understand that, because inferred mineral resources have the lowest level of geologic confidence, requiring their disclosure in a mining registrant's SEC filing could lead to investor misunderstanding about the nature of a registrant's mining operations (that would not be present absent such disclosure). We believe, however, that the proposed definition of inferred mineral resource [154] would reduce any potential misunderstanding by providing appropriate context for and limitations on such disclosure. First, the proposed definition would clearly highlight for investors that inferred mineral resources have the highest degree of uncertainty, allowing investors to take this into account when assessing a registrant's disclosure. Second, the proposed definition would prohibit a registrant from using inferred mineral resources as a basis to determine mineral reserves. Rather, inferred resources would first have to meet the definitional requirements of, and be converted into, measured or indicated mineral resources. Only then would such inferred resources be eligible to be considered as potential mineral reserves under the proposed rules. This should help limit the incentive for a registrant to be aggressive in disclosing inferred mineral resources because such disclosure would not increase the likelihood that such resources would ultimately be deemed to be mineral reserves.

We note that our proposal differs from the CRIRSCO-based codes, which allow a qualified person to make limited use of inferred mineral resources in his or her technical and economic studies as long as certain cautionary language is included in the disclosure.[155] We believe, however, that the significant uncertainty associated with estimates of inferred mineral resources could call into question the results of technical or economic studies based on inferred mineral resources. As such, we do not believe that any such disclosure would be useful for investors.[156] Consequently, our proposed rules would prohibit qualified persons from using inferred mineral resources in any economic analysis conducted to determine the economic viability of mineral projects or economic prospects of mineral deposits in support of SEC disclosures.

We propose to define "indicated mineral resource" as that part of a mineral resource for which quantity and grade or quality are estimated on the basis of adequate geological evidence and sampling.[157] The proposed rules would explain that, as used in this definition, "adequate geological evidence" means evidence that is sufficient to establish geological and grade or quality continuity with reasonable certainty. This means that the level of geological certainty associated with an indicated mineral resource is sufficient to allow a qualified person to apply modifying factors in sufficient detail to support mine planning and evaluation of the economic viability of the deposit.[158] The proposed rules would further provide that an indicated mineral resource has a lower level of confidence than that applicable to a measured mineral resource and may only be converted to a probable mineral reserve.[159]

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[147] *See, e.g.,* JORC Code pt. 20; CRIRSCO International Reporting Template pt. 21; and SAMREC Code pt. 21.

[148] *See* Note to proposed Item 1301(d)(14)(ii) of Regulation S–K.

[149] *See, e.g.,* JORC Code pt. 21; CRIRSCO International Reporting Template pt. 22; and SAMREC Code pt. 22.

[150] *See* proposed Item 1301(d)(10)(i) of Regulation S–K.

[151] *See* proposed Item 1301(d)(10)(ii) of Regulation S–K.

[152] *See* Note to proposed Item 1301(d)(10) of Regulation S–K.

[153] *See* proposed Item 1301(d)(10)(iii) of Regulation S–K.

[154] *See* proposed Item 1301(d)(10) of Regulation S–K.

[155] *See, e.g.,* CRIRSCO International Reporting Template pt. 22, which states that "[c]onfidence in the [inferred mineral resource] estimate is usually not sufficient to allow the results of the application of technical and economic parameters to be used for detailed planning. For this reason, there is no direct link from an Inferred Resource to any category of Mineral Reserves. Caution should be exercised if this category is considered in technical and economic studies." Also, Canada's NI 43–101 2.3(3) states, in part, that "[d]espite paragraph (1)(b), an issuer may disclose the results of a preliminary economic assessment that includes or is based on inferred mineral resources if the disclosure (a) states with equal prominence that the preliminary economic assessment is preliminary in nature, that it includes inferred mineral resources that are considered too speculative geologically to have the economic considerations applied to them that would enable them to be categorized as mineral reserves, and there is no certainty that the preliminary economic assessment will be realized . . ." *See also* JORC Code pt. 21 and 38, SAMREC Code pt. 23, and SME Guide pt. 34, which contain similar cautionary language.

[156] The CRIRSCO-based codes may allow the use of inferred resources in lower level technical or economic studies, but not in higher level studies to support a determination of economic viability. *See, e.g.,* CIM Definition Standards at 4 (2012) which states that "[c]onfidence in the [inferred mineral resource] estimate is insufficient to allow the meaningful application of technical and economic parameters or to enable an evaluation of economic viability worthy of public disclosure. Inferred Mineral Resources must be excluded from estimates forming the basis of feasibility or other economic studies."

[157] *See* proposed Item 1301(d)(9)(i) of Regulation S–K.

[158] *See* proposed Item 1301(d)(9)(ii) of Regulation S–K.

We propose to define "measured mineral resource" as that part of a mineral resource for which quantity and grade or quality are estimated on the basis of conclusive geological evidence and sampling.[160] The proposed rules would explain that, as used in this definition, "conclusive geological evidence" means evidence that is sufficient to test and confirm geological and grade or quality continuity. This means that the level of geological certainty associated with a measured mineral resource is sufficient to allow a qualified person to apply modifying factors in sufficient detail to support detailed mine planning and final evaluation of the economic viability of the deposit.[161] The proposed rules would further provide that, because a measured mineral resource has a higher level of confidence than that applying to either an indicated mineral resource or an inferred mineral resource, it may be converted to a proven mineral reserve or to a probable mineral reserve.[162]

The proposed definitions of "indicated mineral resource" and "measured mineral resource" are substantially similar to the corresponding CRIRSCO-based definitions. We believe aligning the U.S. definitions with the foreign mining code provisions would benefit registrants and investors by promoting uniformity in mining disclosure standards. For those mining registrants that are dual-listed and already subject to the CRIRSCO-based requirements, such alignment should help to reduce any potential additional costs caused by the proposed requirement to disclose indicated and measured mineral resources. In addition, some registrants, even if not currently subject to the CRIRSCO-based requirements, nonetheless apply substantially similar definitions of indicated and measured mineral resources as part of the process of determining mineral reserves.[163]

As noted above, geologic uncertainty directly affects the uncertainty associated with production quantities per period and related cash flows. As such, we believe that in addition to disclosure of resource estimates, it is appropriate to require disclosure of the level of geologic uncertainty associated with different classes of mineral resources. Specifically, we propose to require that the qualified person, as part of the initial assessment,[164] quantify and disclose the uncertainty associated with the production estimates derived from such resources. A qualified person would be permitted to develop mineral resource estimates using any generally accepted method, including geostatistics, simulation or inverse distance. Regardless of the method used to develop resource estimates, however, the qualified person would be required to estimate and disclose, in the prescribed format, the uncertainty associated with each class of mineral resource.[165] The appropriate methods for quantifying and disclosing this uncertainty will, as discussed below, depend upon the specific classification of the resource.

Specifically, for indicated and measured mineral resources, the qualified person would be required to provide the confidence limits of relative accuracy,[166] at a specific confidence level, of the preliminarily estimated production quantities per period from the resource.[167] Using this approach, the geologic uncertainty associated with indicated and measured mineral resources is stated by keeping any two of the three relevant variables (confidence limits of relative accuracy, confidence level, and production periods) constant while varying the third. For example, the risk could be stated as ±15% at 90% confidence for monthly, quarterly or annual production estimates, or ±10% or ±15% at 90% confidence for annual production estimates.

We are proposing[168] that qualified persons report the level of uncertainty for indicated and measured mineral resources using this approach with the condition that the stated production period must be monthly, quarterly or annually.[169] This approach for reporting the level of uncertainty is consistent with what many have suggested in the mining engineering literature to be best practice.[170] We are not, however, proposing any restrictions on the acceptable confidence limits of relative accuracy or confidence level required to disclose indicated or measured mineral resources. In that regard, we recognize that the natural variability of geologic characteristics is different for different deposits.

When estimating the geologic uncertainty associated with indicated and measured mineral resources, the qualified person would be required to consider the limitations of the data, assumptions, and models used to determine the resource estimates.[171] If the qualified person uses numerical estimates of uncertainty[172] obtained

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[159] *See* Note to proposed Item 1301(d)(9) of Regulation S–K. We define "probable mineral reserve" at proposed Item 1301(d)(18) of Regulation S–K.

[160] *See* proposed Item 1301(d)(12)(i) of Regulation S–K.

[161] *See* proposed Item 1301(d)(12)(ii) of Regulation S–K.

[162] *See* Note to proposed Item 1301(d)(12) of Regulation S–K.

[163] As explained in note 128, *supra*, the best practice in mining engineering is to determine mineral resources, prior to engineering and economic evaluation, to determine if any or all of those resources can be classified as mineral reserves. The predominant approach in the mining engineering literature is that mineral resource classification should be based on the estimator's judgment of the uncertainty in estimates due to the geologic uncertainty. *See, e.g.*, JORC pt. 24 and SAMREC pt. 26. This is consistent with our proposed definitions of mineral resource classifications.

[164] We propose to define "initial assessment" as a preliminary technical and economic study of the economic potential of all or parts of mineralization to support the disclosure of mineral resources. An initial assessment is different from a pre-feasibility study in that a pre-feasibility study is used to determine whether all or part of a mineral resource can be converted into a mineral reserve. We discuss the proposed requirement that the qualified person must conduct at least an initial assessment in order to determine resources in section II.E.3, *infra*.

[165] *See* Instruction 3 to proposed Item 601(b)(96)(iv)(B)(13) of Regulation S–K.

[166] The term "confidence limits of relative accuracy" refers to the values on both sides of zero (the average relative accuracy for unbiased mineral resource estimates) that show, for a specified probability (the confidence level), the range in which the relative accuracy lies. For example, if a report says the confidence limits of relative accuracy for a mineral resource is ±10% at 90% confidence for annual production quantities, it means there is a nine out of ten chance that the actual annual production quantities will be between 90% and 110% of the planned quantities.

[167] In this regard, the mining engineering literature makes clear that specifying the confidence limits of relative accuracy, at a specific confidence level, of production quantities per period is the best way to quantify uncertainty associated with resources. *See, e.g.*, E.H. Isaaks, and R.M. Srivastava, *An Introduction to Applied Geostatistics* 489–513 (1990); and M.E. Rossi, and C.V. Deutsch, *Mineral Resource Estimation* 209–222 (2014). *See generally* P.R. Stephenson, *Mineral Resource Classification. How the Viability of Your Project May Hang On a Qualified Person's Judgment* (2011); and P. Stoker and C. Moorhead, *Confidence in Resource Estimates—Beyond Classification* (2009).

[168] *See* Instruction 3 to proposed Item 601(b)(96)(iv)(B)(13) of Regulation S–K.

[169] In this regard, we are of the view that the terms "mine planning" and "detailed mine planning," as used in the definitions of indicated and measured mineral resources, must incorporate mine plans that include, respectively, production periods of one year and production periods of less than one year. We are not, however, proposing to require the qualified person to disclose the exact production quantity per period that is the basis for the uncertainty disclosure because we recognize that such quantities are preliminary at this stage and only reflect the qualified person's judgment of the scale (or size) of the likely mining project.

[170] *See, e.g.*, Rossi & Deutsch, *supra*, note 167 at 209–222; and Stephenson, *supra*, note 167 at 6–8.

[171] *See* Instruction 4 to proposed Item 601(b)(96)(iv)(B)(13) of Regulation S–K.

[172] Although the confidence limits of relative accuracy are expressed in a numeric format, the proposed rules do not require that a registrant derive such limits mathematically. We note in this regard that the CRIRSCO-based codes also

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from geostatistical (*e.g.,* kriging) or other numerical methods (*e.g.,* conditional simulation) when determining the required estimates of confidence in mineral resources, he or she should consider all the risk factors, including those risk factors external to such numerical estimation, that will need to be addressed to prevent the uncertainty disclosure from being materially misleading. Specifically, the qualified person should consider those risk factors (*e.g.* reliability of drilling, sampling, or assaying techniques, and validity of modeling assumptions such as assumptions about geologic structures and domains) that may raise the level of uncertainty associated with the mineral resource estimate above the level of uncertainty derived solely from the numerical estimation process. This is because the numerical estimates of uncertainty from geostatistics or simulation do not account for risk factors associated with the input such as, but not limited to, drilling or sampling methods, laboratory assaying methods, outlier treatment, assumptions made during modeling of domains and geologic controls, compositing (averaging grades over similar sampling volumes or lengths) and establishing upper limits of grades. Consequently, such numerical estimates may underestimate the uncertainty associated with the mineral resources. Thus, the qualified person would need to take into account the impacts of these risk factors and make whatever adjustments are necessary so that the estimates of confidence limits disclosed are materially complete and accurate. This could be done, if appropriate, by either expanding the confidence limits or decreasing the confidence level.

For example, if a qualified person uses geostatistics or simulation to estimate the uncertainty associated with a particular mineral resource as "±15% relative accuracy at 90% confidence level for annual production quantities," then he or she, after determining that the risks associated with external risk factors are negligible, may report the numerically derived estimate without adjusting for any external risks. On the other hand, if the qualified person first determines that the risk factors external to the calculation are not negligible, then he or she would have to adjust the confidence limits to be wider than ±15% or use a confidence level less than 90% to account for the risk factors external to the calculation. In such case, the specific confidence limits (*e.g.,* ±25%) or confidence level (*e.g.* 80%) that would be appropriate depends on the nature and significance of the risk factors external to the calculation of confidence limits obtained using numerical methods (*e.g.,* kriging or conditional simulation).

We believe, therefore, that the qualified person should be required to justify, in the technical report summary, the final estimates of confidence limits he or she uses after adjusting for the external risk factors.[173] Specifically, whether the qualified person uses numerical estimates of uncertainty (obtained from geostatistics/simulation) or non-numerical (qualitative) methods, he or she would be required to support the description of this uncertainty with a list of all factors considered and explain how those factors contributed to the final conclusion about the level of risk (confidence limits) underlying the resource classification included in the technical report summary.

As noted above, a qualified person could use a method such as the inverse distance method to estimate mineral resources, determining that all the regions of the deposit that were estimated by means of drill holes with spacing of less than a certain distance are measured mineral resources.[174] If the qualified person can conclude, based on his or her experience in similar deposits with similar facts and circumstances, that annual production estimates generated from these resources will deviate ±15%, nine out of ten times, he or she could then disclose his or her confidence in the measured mineral resources of "±15% relative accuracy at 90% confidence level for annual production quantities." [175]

Unlike the proposed rules, the CRIRSCO-based codes do not require the qualified person to disclose numerical estimates of the uncertainty associated with the different classes of mineral resources. Instead, those codes only require the qualified person to report fully the assumptions and factors considered in classifying mineral resources.[176] The CRIRSCO-based codes do, however, encourage qualified persons (in some instances) to disclose the level of uncertainty surrounding estimates where possible.[177] We believe that this optional approach could lead to disparities in mineral resource classification and confusion for investors. Accordingly, we are proposing to require the disclosure of numerical estimates of uncertainty, as we believe it would promote transparency and comparability among registrants about mineral resource classification.

The disparity in practice in this area and the implications for investors have been discussed by many authors in the mining engineering literature.[178] In particular, the disparity in determining the boundary between inferred and indicated mineral resources could significantly affect a qualified person's conclusion on whether a project is economically viable or not, since inferred mineral resources cannot be used in economic analysis. We believe investors would benefit from greater transparency and more reliable disclosure of the risk associated with each class of resources by requiring what is now only recommended as best practice by the CRIRSCO-based codes.

Finally, as regards inferred mineral resources, we believe that they have

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anticipate that it is not always possible to estimate mathematically the confidence limits associated with a resource estimate. *See, e.g.,* JORC Code pt. 25, which states "Where a statement of the relative accuracy and confidence level is not possible, a qualitative discussion of the uncertainties should be provided in its place." Also, several authors have suggested alternative approaches for estimating uncertainty when mathematical estimates of confidence limits are not possible in the mining engineering literature. *See generally,* Stephenson, *supra,* note 167, and D.V. Snowden, *Practical Interpretation of Mineral Resource and Ore Reserve Classification Guidelines* (2001).

[173] *See* Instructions 4 and 5 to proposed Item 601(b)(96)(iv)(B)(13) of Regulation S–K.

[174] For example, a qualified person using inverse distance could conclude that the portion of the resource that is estimated by drill holes 1,300 ft. apart is measured mineral resources.

[175] *See* note 172, *supra.*

[176] *See, e.g.,* JORC Code at 30, where the checklist provided for mineral resource classification requires the qualified person to provide "the basis for the classification of the Mineral Resources into varying confidence categories [and] whether appropriate account has been taken of all relevant factors (*i.e.* relative confidence in tonnage/grade estimations, reliability of input data, confidence in continuity of geology and metal values, quality, quantity and distribution of the data)." See also CIM's Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines 19 (2003), which states that "[t]he criteria used for classification should be described in sufficient detail so that the classification is reproducible by others." We are also proposing to require the qualified person to discuss these assumptions in the technical report summary (*see* proposed Item 601(b)(96)(iv)(B)(13) of Regulation S–K) and to require the discussion of these assumptions for first time disclosure of mineral resources or material changes to mineral resource disclosure in SEC filings (*see* proposed Item 1304(b)(9) of Regulation S–K).

[177] *See e.g.,* JORC Code pt. 25, which states "Competent Persons are encouraged, where appropriate, to discuss the relative accuracy and confidence level of the Mineral Resource estimates with consideration of at least sampling, analytical and estimation errors. The statement should specify whether it relates to global or local estimates, and, if local, state the relevant tonnage. Where a statement of the relative accuracy and confidence level is not possible, a qualitative discussion of the uncertainties should be provided in its place."

[178] *See generally* P.R. Stephenson, *Mineral Resource Classification. How the Viability of Your Project May Hang On a Qualified Person's Judgment* (2011); and P. Stoker and C. Moorhead, *Confidence in Resource Estimates—Beyond Classification* (2009).

such a low level of confidence that it would be inappropriate for a qualified person to use them in production estimates for a period equal to or shorter than a year. Differences between actual and estimated production for such periods would have such high standard deviations that they would not provide an appropriate basis for investment decisions.[179] We are, therefore, proposing to require qualified persons to state the minimum percentage of inferred mineral resources they believe will be converted to indicated and measured mineral resources with further exploration.[180]

Request for Comment

54. Should we require a registrant to classify its mineral resources into inferred, indicated and measured mineral resources, as proposed? Why or why not? If not, what classifications would be preferable and why?

55. Should we define "inferred mineral resource" as proposed? Why or why not? Should we require the disclosure of inferred mineral resources although quantity and grade or quality with respect to those mineral resources can be estimated only on the basis of limited geological evidence and sampling, as proposed? Should we require a qualified person to describe the level of risk associated with an inferred mineral resource based on the minimum percentage that he or she estimates would convert to indicated or measured mineral resources with further exploration, as proposed? Should we permit rather than require a registrant to disclose inferred mineral resources because of the high level of geologic uncertainty associated with that class of mineral resource? Should we prohibit the disclosure of inferred mineral resources for that reason?

56. Should we prohibit the use of inferred mineral resources to make a determination about the economic viability of extraction, and preclude the conversion of an inferred mineral resource into a mineral reserve, as proposed? Would these proposed prohibitions be sufficient to mitigate the added uncertainty that could result from the requirement to disclose inferred mineral resources? Are there circumstances that would justify a qualified person's use of inferred mineral resources to make a determination about the economic viability of extraction, or that would allow the conversion of an inferred mineral resource into a mineral reserve? Should we permit the use of inferred mineral resources to make a determination about the economic viability of extraction as long as the qualified person and registrant disclose the high level of risk associated with such mineral resources? If so, what would be the potential effects on registrants and investors?

57. Should the definition of "inferred mineral resource" provide that such mineral resource has the lowest level of geological confidence of all mineral resources, which prevents the application of the modifying factors in a manner useful for evaluation of economic viability, as proposed? Should we require a registrant, when disclosing inferred resources, to provide a legend or cautionary statement about the geological uncertainty associated with inferred resources? If so, what should such legend or cautionary statement say and where in the SEC filing should it be disclosed?

58. Should we define "indicated mineral resource," as proposed? In particular, should the definition depend on a qualified person's ability to estimate quantity and grade or quality using adequate geological evidence and sampling, as proposed? Should the definition of "adequate geologic evidence" be based on a qualified person's ability to apply modifying factors in sufficient detail to support mine planning and evaluation of the economic viability of the deposit, as proposed? Should we require a qualified person to describe the level of risk associated with indicated mineral resources based on the confidence limits of relative accuracy at a particular confidence level for production estimates for one-year periods, as proposed? Should we, instead, allow the qualified person to provide a qualitative discussion of the uncertainties in place of confidence limits if he or she so chooses? Why or why not?

59. Should the definition of "indicated mineral resource" include that such mineral resource has a lower level of confidence than what applies to a measured mineral resource and may only be converted to a probable mineral reserve, as proposed?

60. Should we define "measured mineral resource," as proposed? In particular, should the definition depend on a qualified person's ability to estimate quantity and grade or quality on the basis of conclusive geological evidence? Should we base the definition of "conclusive geologic evidence" on a qualified person's ability to apply modifying factors in sufficient detail to support detailed mine planning and final evaluation of the economic viability of the deposit, as proposed? Should we require a qualified person to describe the level of risk associated with measured mineral resources based on the confidence limits of relative accuracy at a particular confidence level for production estimates for periods of less than one year, as proposed? Should we, instead, allow the qualified person to provide a qualitative discussion of the uncertainties in place of confidence limits if he or she so chooses? Why or why not? Are there particular challenges to complying with the proposed requirement to disclose numerical estimates of the level of confidence for each class of mineral resource?

61. Should the definition of "measured mineral resource" include that such mineral resource has a higher level of confidence than what applies to either an indicated mineral resource or an inferred mineral resource and may be converted to a proven mineral reserve or to a probable mineral reserve, as proposed?

62. Should we require the disclosure of numerical estimates of the level of confidence associated with each class of mineral resource, as proposed? Why or why not? Should we instead follow the practice in the CRIRSCO-based codes and require only the disclosure of all material assumptions and the factors considered in classifying mineral resources? Why or why not?

3. The Initial Assessment Requirement

As proposed, a registrant's disclosure of mineral resources must be based upon a qualified person's initial assessment supporting the determination of mineral resources.[181] At a minimum, the qualified person's initial assessment must include a qualitative evaluation of modifying factors to establish the economic potential of the mining property or project (*i.e.,* that there are reasonable prospects for economic extraction of the mineral resource.) We believe that requiring a well-defined and specific technical study to support disclosure of mineral resources would provide greater assurance to investors that mineral resource disclosure is reliable.

In connection with the registrant's disclosure of mineral resources, the proposed rules would specify that the qualified person must provide the registrant with information and documentation of the initial assessment that supports a determination of mineral resources. If the property in question is material to the registrant, the qualified person must also provide the registrant with a technical report summary that supports the determination of mineral resources. As proposed, the summary must describe the procedures, findings and conclusions reached for the initial assessment.

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[179] Possible sources of uncertainty that affect the reporting of inferred resources may include sampling or drilling methods, data processing and handling, geologic modeling and estimation.

[180] *See* Instruction 3 to proposed Item 601(b)(96)(iv)(B)(13) of Regulation S–K. Uncertainty estimates for inferred mineral resources must be stated in the form "the qualified person expects at least z% of inferred mineral resources to convert to indicated or measured mineral resources with further exploration and analysis."

[181] *See* proposed Item 1302(c) of Regulation S–K.

We propose to define an "initial assessment" as a preliminary[182] technical and economic study of the economic potential of all or parts of mineralization to support the disclosure of mineral resources. As proposed, the initial assessment must be prepared by a qualified person and must include appropriate assessments of reasonably assumed modifying factors together with any other relevant operational factors that are necessary to demonstrate, at the time of reporting, that there are reasonable prospects for economic extraction.[183] The proposed rules would explain that an initial assessment is required for disclosure of mineral resources but cannot be used as the basis for disclosure of mineral reserves.[184]

An initial assessment, as proposed, is not a scoping[185] or conceptual study as defined in some of the CRIRSCO-based codes[186] or a preliminary economic assessment as defined in Canada's NI 43–101.[187] The purpose of an initial assessment is narrower than those studies as it would be done solely to support disclosure of mineral resources and not to determine whether to proceed with further work leading to preparing a pre-feasibility study for reserve determination.

We are proposing instructions to the initial assessment requirement that are designed to elicit material information concerning the basis for the qualified person's conclusion that there are reasonable prospects for economic extraction. The first proposed instruction is that an initial assessment must include cut-off grade estimation, based on assumed unit costs for surface or underground operations and estimated mineral prices.[188] Cut-off grade refers to the grade at which the destination of the material changes during mining. For purposes of the initial assessment, it distinguishes between material that is going to the waste dump and material that is going to the processing plant (in surface mining) or material that is not mined and material mined to be processed (in underground mining).

We believe that a discussion of cut-off grade is an appropriate requirement for a technical study that supports mineral resource estimation because, by definition, a mineral resource estimate is not just an inventory of all mineralization. It is an estimate of that part of the deposit that has reasonable prospects of economic extraction.[189] We believe the cut-off grade is the best indicator, at this stage, of such prospects because it requires the qualified person to estimate and exclude that portion of the deposit that has no reasonable prospects of economic extraction at the time of the analysis.

As part of the initial assessment, the qualified person would need to assume the cost to mine a typical unit of the specific material involved. We are not proposing to require the qualified person to estimate all specific operating and capital costs in detail in order to estimate unit cost as part of the initial assessment.[190] Rather, for the initial assessment, the proposed rule requires the qualified person to make assumptions about the two key determinants of cut-off grade estimation—operating costs and commodity prices. Any cut-off grade estimation that is not based upon, or does not disclose, these two assumptions may not fully meet the standard required to demonstrate reasonable prospects of economic extraction.

As proposed, a qualified person must base the unit cost estimate used in cut-off grade estimation in an initial assessment on assumed unit costs derived, for example, from historic data or factoring, for either underground or surface mining.[191] In addition, the qualified person must make and disclose an assumption about whether the deposit will be mined with underground or surface mining methods.[192] Given the wide disparity between surface and underground mining costs, we are concerned that any unit costs estimate that is not specific to one of these two broad categories of mining methods may not adequately establish the prospects of economic extraction.

When estimating mineral prices for the cut-off grade estimation, the qualified person would have to use a commodity price that is no higher than the average spot price during the 24-month period prior to the end of the last fiscal year, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period, unless prices are defined by contractual arrangements.[193] For purposes of consistency, we are proposing that qualified persons use this same ceiling for all other commodity price estimates in the proposed mining disclosure for both mineral resources and reserves.[194]

Commodity prices used to evaluate mineral resources and reserves should reflect the long term expectations of the qualified person conducting such analysis. The staff has provided guidance that commodity prices used in mineral reserve estimation should not exceed a 3-year trailing average. The use of a trailing average is also the Commission's standard for oil and gas reserves (although oil and gas reserves use a 12-month trailing average).[195] By contrast, most foreign jurisdictions allow the qualified person to use any reasonable and justifiable price, which is based on the qualified person's or management's view of long term market trends.[196]

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[182] The term "preliminary" as used in this context refers to a less rigorous study than what is required for feasibility studies, as defined and discussed in section II.F.2, *infra.*

[183] *See* proposed Item 1301(d)(11)(i) of Regulation S–K.

[184] *See* proposed Item 1301(d)(11)(ii) of Regulation S–K.

[185] A scoping study is "an order of magnitude technical and economic study of the potential viability of Mineral Resources. It includes appropriate assessments of realistically assumed Modifying Factors together with any other relevant operational factors that are necessary to demonstrate at the time of reporting that progress to a Pre-Feasibility Study can be reasonably justified." JORC Code pt. 19 and SME Guide pt. 48.

[186] *See, e.g.,* the SME Guide, Table 2, at 62–63, which provides requirements for scoping, pre-feasibility and feasibility studies.

[187] *See* NI 43–101 pt. 1.1.

[188] *See* proposed Instruction 1 to Item 1302(c) of Regulation S–K.

[189] *See, e.g.,* CIM Definition Standards at 4 ("A Mineral Resource is an inventory of mineralization that under realistically assumed and justifiable technical and economic conditions might become economically extractable.") *See also* the JORC Code pt. 20 ("Portions of a deposit that do not have reasonable prospects for eventual economic extraction must not be included in a Mineral Resource"); and the SME Guide pt. 33 (". . . a Mineral Resource is not an inventory of all mineralization drilled or sampled . . . [but] rather it is a realistic estimate of mineralization which, under assumed and justifiable technical and economic conditions, might become economically extractable.")

[190] If the qualified person decides to include economic analysis in the initial assessment, then he/she must include detailed cost estimates. *See* discussion in section II.E.3, *infra.*

[191] *See* Instruction 1 to proposed Item 1302(c) of Regulation S–K.

[192] *Id.*

[193] *Id.*

[194] *See, e.g.,* sections II.G.1 and II.G.2, *infra.*

[195] *See* Regulation S–X 4–10(a)(22)(v) (17 CFR 210.4–10(a)(22)(v)).

[196] For example, the JORC Code and Canada's NI 43–101 and CIM Standards call for the qualified person to report the assumptions underlying price estimates and do not prescribe a price model. *See, e.g.,* the JORC Code, Table 1 at 32 (requiring the qualified person to report "[t]he derivation of assumptions made of metal or commodity price(s),

We believe the qualified person must use commodity price estimates that are reasonable and justifiable and represent long term[197] market trends in mineral resource and reserve estimation. Such commodity price estimates should account for the current prices and long term price fluctuations. Since no universal commodity price model exists for predicting long term prices, we also believe a reasonable ceiling is necessary to ensure mineral resource and reserve estimates are based on prices that are realistic. The mining engineering literature contains several models for predicting commodity prices that have varying strengths and weaknesses. Most of these models rely to some degree on historical market prices. There is, however, no universally agreed upon model for predicting long term commodity prices.

For the purpose of public disclosure, we believe a price model should be transparent, generally affordable, and promote comparability between mineral resources and reserves of different registrants. We also believe that the model should provide flexibility to registrants in selecting a price while helping to ensure that reserve estimates are based on prices that are realistic.

We believe that a pricing model using historical prices to prescribe a reasonable ceiling best meets all the stipulated criteria. For exchange-traded commodities, the qualified person would have to use a price based on the unweighted arithmetic average of the daily closing price for each trading day within the 24-month period preceding the last day of the fiscal year covered by the SEC filing. For commodities that are not traded on an exchange, the qualified person would have to use the 24-month average of prevailing prices in the region as the ceiling.

The sole exception to the 24-month trailing average ceiling price model would be when registrant has a sales contract in place that has defined the price of the commodity. In that case, the registrant may use the price stipulated by the sales contracts, provided that such price is reasonable[198] and the qualified person preparing the resource estimates discloses that he or she is using a contractual price and discloses the contractual price used. In all cases and regardless of what price is used, the qualified person would have to disclose both the price used and the justification for such use.

We are proposing an average over a 24-month period because we believe it is more responsive to price changes, compared to a 3-year average, based on the staff's experience with the 3-year average in SEC filings. In this regard, we believe the pricing time frame for mineral resource and reserve disclosure should be long enough to ensure the average reflects long term market trends but short enough to prevent the average from lagging behind market trends. On the one hand, a 3-year average lags farther behind market changes than, and is not as responsive as, a 2-year average. A 12-month average, on the other hand, could be too volatile and may not adequately reflect long term trends.

The second proposed instruction to the initial assessment requirement states that the qualified person must provide a qualitative assessment of all other relevant modifying factors to establish economic potential and justify why he or she believes that all issues can be resolved with further exploration and analysis.[199] The relevant modifying factors would include, but not be limited to, those set forth in the following proposed Table 1.[200]

TABLE 1—SUMMARY DESCRIPTION OF MODIFYING FACTORS EVALUATED IN TECHNICAL STUDIES[201]

Factors	Initial assessment	Preliminary feasibility study	Feasibility study
Site infrastructure	Establish whether or not access to power and site is possible. Assume infrastructure location, plant area required, type of power supply, site access roads and camp/town site, if required.	Required access roads, infrastructure location and plant area defined. Source of all utilities (power, water, etc.) required for development and production defined with initial designs suitable for cost estimates. Camp/town site finalized.	Required access roads, infrastructure location and plant area finalized. Source of all required utilities (power, water, etc.) for development and production finalized. Camp/Town site finalized.
Mine design and planning.	Mining method defined broadly as surface or underground. Production rates assumed.	Preferred underground mining method or the pit configuration for surface mine defined. Detailed mine layouts drawn for each alternative. Development and production plan defined for each alternative with required equipment fleet specified.	Mining method finalized. Detailed mine layouts finalized for preferred alternative. Development and production plan finalized for preferred alternative with required equipment fleet specified.

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for the principal metals, minerals and co-products" under revenue factors.) *See also* ASX Listing Rules-Guidance Note 31 pt. 2.4 ("ASX also notes that to the extent that an estimate of mineral resources or ore reserves involves a representation about future matters, it must be based on reasonable grounds—meaning that the price, capital expenditure and operational expenditure assumptions used to calculate the estimates must also be objectively reasonable . . .") NI 43–101pt. 3.4(c) requires that a registrant disclosing mineral resources or reserves must disclose "the key assumptions, parameters, and methods used to estimate the mineral resources and mineral reserves." The CIM Best Practice Guidelines lists [commodity] prices as one such key assumption but provides no guidance on how prices should be determined except that "if commodity prices used differ from current prices . . ., an explanation should be given, including the effect on the economics of the project if current prices were used." *See* CIM's Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines 30 (2003).

[197] "Long term" in this context refers to the life of the mine. *See, e.g.,* David Humphreys, "Pricing and Trading in Metals and Minerals," in 1 *SME Mining Engineering Handbook, supra* note 128, at 49 (stating that the assumed commodity price should be "the expected annual average price to be achieved for the mined product during each year of the project's life.")

[198] In this context, reasonable means that the contractual price must be a reasonable estimate of the expected annual average price to be achieved for the mined product during each year of the project's life. For example, for a new mine with a 25-year mine life, it would not be reasonable to use a contractual price (higher than the 24 month trailing average) if the contract price is for only 25% of the mine's production for the first six months. In this situation, the contractual price would not be a reasonable estimate of the expected annual average price over the 25-year mine life.

[199] See proposed Instruction 2 to Item 1302(c) of Regulation S–K.

[200] *See* Table 1 following Instruction 4 to proposed Item 1302(c) of Regulation S–K. The modifying factors and requirements in Table 1 are modeled on accepted industry practice and supported by the relevant mining engineering literature. *See, e.g.,* Richard L. Bullock, "Mineral Property Feasibility Studies," in 1 *SME Mining Engineering Handbook, supra,* note 115 at 227–261.

TABLE 1—SUMMARY DESCRIPTION OF MODIFYING FACTORS EVALUATED IN TECHNICAL STUDIES[201]—Continued

Factors	Initial assessment	Preliminary feasibility study	Feasibility study
Processing plant	Establish that all products used in assessing prospects of economic extraction can be processed with methods consistent with each other. Processing method and plant throughput assumed.	Detailed bench lab tests conducted. Detailed process flow sheet, equipment sizes, and general arrangement completed. Detailed plant throughput specified.	Detailed bench lab tests conducted. Pilot plant test completed, if required, based on risk. Process flow sheet, equipment sizes, and general arrangement finalized. Final plant throughput specified.
Environmental compliance and permitting.	List of required permits and agencies drawn. Determine if significant obstacles exist to obtaining permits. Identify pre-mining land uses. Assess requirements for baseline studies. Assume post-mining land uses. Assume tailings disposal, reclamation, and mitigation plans.	Identification and detailed analysis of requirements or interests of agencies, NGOs, communities and other stakeholders. Detailed baseline studies with preliminary impact assessment (internal). Detailed tailings disposal, reclamation and mitigation plans.	Identification and detailed analysis of requirements or interests of agencies, NGOs, communities and other stakeholders finalized. Completed baseline studies with final impact assessment (internal). Tailings disposal, reclamation and mitigation plans finalized.
Other modifying factors[1].	Appropriate assessments of other reasonably assumed modifying factors necessary to demonstrate reasonable prospects for economic extraction.	Reasonable assumptions, based on appropriate testing, on the modifying factors sufficient to demonstrate that extraction is economically viable.	Detailed assessments of modifying factors necessary to demonstrate that extraction is economically viable.
Capital costs	Optional.[2] If included: Accuracy: ±50% Contingency: ≤25%	Accuracy: ±25% Contingency: ≤15%	Accuracy: ±15%. Contingency: ≤10%.
Operating costs	Optional.[2] If included: Accuracy: ±50% Contingency: ≤25%	Accuracy: ±25% Contingency: ≤15%	Accuracy: ±15%. Contingency: ≤10%.
Economic analysis	Optional.[3] If included, taxes and revenues are assumed. Discounted cash flow analysis based on assumed production rates and revenues from available measured and indicated mineral resources.	Taxes described in detail; revenues are estimated based on at least a preliminary market study; economic viability assessed by detailed discounted cash flow analysis.	Taxes described in detail; revenues are estimated based on at least a final market study or possible letters of intent to purchase; economic viability assessed by detailed discounted cash flow analysis.

[1] The modifying factors, as defined in this section, include, but are not limited to, the factors listed in this table. The number, type and specific characteristics of the modifying factors applied will necessarily be a function of and depend upon the mineral, mine, property, or project.

[2] Initial assessment, as defined in this section, does not require cash flow analyses or operating and capital cost estimates. The qualified person may include such cash flow analyses at his or her discretion.

[3] Initial assessment does not require an economic analysis, although it requires unit cost assumptions based on an assumption that the resource will be exploited with surface or underground mining methods. Economic analyses, if included, must only be based on measured and indicated mineral resources.

This table sets forth the proposed minimum requirements for various factors that the qualified person must evaluate when preparing an initial assessment, pre-feasibility study, or feasibility study. We are presenting them all in this section, in one table, to facilitate a comparison of the modifying factors evaluation requirement across the three key technical studies proposed to be used for mineral resource and reserve disclosure. As this presentation demonstrates, the proposed modifying factors evaluative process becomes more exacting as mining property assessment progresses from mineral resource estimation to mineral reserve estimation.

At the initial assessment stage, as proposed, a qualified person would be required to evaluate, at a minimum, the following modifying factors:

- Site infrastructure (*e.g.,* whether access to power and site is possible);
- mine design and planning (*e.g.,* what is the broadly defined mining method);
- processing plant (*e.g.,* whether all products used in the preliminary economic assessment can be processed with methods consistent with each other);
- environmental compliance and permitting (*e.g.,* what are the required permits and corresponding agencies and whether significant obstacles exist to obtaining those permits); and
- any other reasonably assumed modifying factors, including socio-economic factors, necessary to demonstrate reasonable prospects for economic extraction.

We believe a qualitative evaluation of these listed factors, at a minimum, is necessary to determine the economic potential of a mining property. An assessment of the geological characteristics of the mined material would not be complete if it did not include a thorough evaluation and discussion of infrastructure, mine design, processing and environmental issues that could pose obstacles to the material's extraction.

To demonstrate the economic feasibility of mining projects, estimates of future cash flows are necessary because capital expenditures, operating costs and revenues vary over the life of a mine due to variations in mining conditions. We believe, however, that an initial assessment, the singular goal of which is to demonstrate reasonable prospects of economic extraction, not economic viability, need not contain such quantitative analysis.

Nevertheless, if the qualified person would like to demonstrate the economic potential of the mining property beyond the minimum requirements of an initial assessment[202] by including a cash flow analysis, we believe such analysis could benefit investors, subject to restrictions. Thus, the third proposed instruction to the initial assessment requirement addresses the option of providing cash flow analysis as part of the initial assessment. This instruction states that, while a qualified person may include cash flow analysis in an initial assessment to demonstrate economic potential, the qualified person may not use inferred mineral resources in such cash flow analysis.[203] Moreover, if the qualified person includes cash flow analysis in the initial assessment, then operating and capital cost estimates must have an accuracy level of at least approximately ±50% [204] and a contingency level of no greater than 25% of the direct estimate.[205] The proposed instruction would provide that the qualified person must state the accuracy and contingency levels in the initial assessment.

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[201] As proposed, an initial assessment would be used to support disclosure of mineral resources while a prefeasibility or final feasibility study would be used to support disclosure of mineral reserves. We discuss feasibility studies in section II.F.2.

[202] As proposed, the minimum requirements of an initial assessment would consist of cut-off grade estimates, based on an assumed long term commodity price that is no higher than the 24 month spot price average and unit cost of production, and qualitative evaluation of other relevant modifying factors.

We believe that the proposed prohibition against using inferred mineral resources in an initial assessment's cash flow analysis is reasonable because of the high level of geological risk associated with such mineral resources. We further believe that the proposed accuracy and contingency requirements [206] for operating and capital costs are appropriate because they are generally consistent with those accepted for scoping studies.[207]

We do not believe that other quantitative measures of economic potential that omit cash flows are appropriate and are concerned that they potentially could be misleading. As explained above, capital expenditures, operating costs and revenues vary over the life of a mine due to variations in mining conditions. Hence, economic analyses that do not account for these variations may not tell a complete story. For example, a gross profit evaluation that does not account for the timing of capital outlays and revenues could indicate that a project is viable, yet in actuality timely loan repayments may not be possible. Consequently, we are proposing that, to the extent a qualified person wants to include an economic analysis in an initial assessment, he or she would only be permitted to use a cash flow analysis; all other quantitative analyses would be prohibited.

The fourth proposed instruction to the initial assessment requirement refers the qualified person to Table 1 for the assumptions permitted to be made when preparing the initial assessment. These include assumptions concerning infrastructure location and the required plant area, type of power supply, site access roads and camp or town site, production rates, processing method and plant throughput, post-mining land uses, and plans for tailings disposal, reclamation, and mitigation. We believe that it is reasonable to permit assumptions to be made for these factors for the initial assessment. Allowing assumptions for a variety of factors at the resource determination stage is generally consistent with guidelines under the CRIRSCO-based codes.[208] Moreover, the assumption phase is temporary as the qualified person must substitute most assumptions with empirical evidence and facts as part of the pre-feasibility or feasibility study that is required for determining mineral reserves.

Request for Comment

63. Should we require that a registrant's disclosure of mineral resources be based upon a qualified person's initial assessment, which supports the determination of mineral resources, as proposed? Why or why not? Is there another form of analysis or means of disclosure that would be more appropriate for the determination and disclosure of mineral resources? Would disclosure of the material risks associated with mineral resource determination be an adequate substitute for the initial assessment requirement?

64. If we require an initial assessment to support the determination of mineral resources, should we define "initial assessment," as proposed, to require the consideration of applicable modifying factors and relevant operational factors for the purpose of determining (at the resource evaluation stage) whether there are reasonable prospects for economic extraction? Should we instead only require consideration of modifying and operational factors at the reserve determination stage?

65. Should we require an initial assessment to include cut-off grade estimation, as proposed? Why or why not?

66. Should we require a qualified person to base cut-off grade estimation on assumed unit costs for surface or underground operations, as proposed? Is it appropriate to allow the qualified person to make an assumption about unit costs, as proposed, or should we require a more detailed estimate of unit costs at the resource determination stage? Is it appropriate to require the qualified person to disclose whether the unit cost estimates are for surface or underground operations, as proposed?

67. Should we also require a qualified person to base cut-off grade estimation on estimated mineral prices, as proposed? In this regard, should we require the qualified person to use a commodity price that is no higher than the average spot price during the 24-month period prior to the end of the last fiscal year, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period, unless prices are defined by contractual arrangements, as proposed? Does a ceiling model based on historical prices best meet the goals of transparency, cost efficiency and comparability? Why or why not? Is there another model that would better meet these goals? If another price model better meets these goals, what should be the basis of estimated mineral prices for purposes of the initial assessment? Whatever price model we adopt, should it be used to determine the commodity price itself? Or should it be used, as proposed, to determine the ceiling of the commodity prices?

68. Is the proposed 24-month period the most appropriate period for the estimated price requirement? Would a 12, 18, 30, or 36-month period, or some other duration, be more appropriate? Should the 24-month period, or other period be fixed and apply to all registrants, or should the period vary depending upon the type of commodity being mined and other factors?

69. Should we require, as proposed, the same ceiling price for mineral resource and reserve estimation? If not, how should the prices used for mineral resource and reserve estimation differ? Would such criteria meet the goals of transparency, cost efficiency and comparability?

70. Should we require that for purposes of the initial assessment a qualified person must provide at least a qualitative assessment of all relevant modifying factors to establish economic potential and justify why he or she believes that all issues can be resolved with further exploration and analysis, as proposed? Are the modifying factors

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[203] *See* Instruction 3 to proposed Item 1302(c) of Regulation S–K.

[204] The phrase "accuracy level of at least approximately ±50%" means that the qualified person must have a reasonable basis to believe that assumptions underlying the estimate will result in actual costs with a substantial likelihood of being within 50% and 150% of the estimate.

[205] The term "contingency" is used to address the level of confidence in the cost estimates. It generally means the amount "set aside for any additional, unforeseen costs associated with unanticipated geologic circumstances or engineering conditions." Scott A. Stebbins, "Cost Estimating for Underground Mines," in 1 *SME Mining Engineering Handbook, supra*, note 115, at 270. Thus, a contingency level of ≤25% means the contingency cannot be more than 25% of the direct cost estimate.

[206] As proposed, Table 1 includes both accuracy and contingency requirements for operating and capital cost estimates.

[207] *See, e.g.*, the SME Guide, Table 2, at 62–63, which provides accuracy and contingency ranges for capital and operating cost estimates in scoping, pre-feasibility and feasibility studies. *See also* note 185, *supra*.

[208] *See, e.g.*, the SME Guide, Table 1, at 39–61.

provided as examples in the proposed instruction and table the most appropriate factors to be included? Are there other factors that should be specified in the instruction and table in lieu of or in addition to the mentioned factors? Would presentation of the modifying factors in a table benefit investors, registrants and qualified persons?

71. Should we permit the qualified person to make assumptions about the modifying factors set forth in the proposed table at the resource determination stage, as proposed? Why or why not? Are there other assumptions that we should specify in lieu of or in addition to those already mentioned in the proposed table?

72. Should we permit a qualified person to include cash flow analysis in an initial assessment to demonstrate economic potential, as proposed? Why or why not? If we should permit cash flow analysis in an initial assessment, should we require that operating and capital cost estimates in the analysis have an accuracy level of at least ±50% and a contingency level of ≤25%, as proposed? If not, what should the accuracy and contingency levels be? Should we require the qualified person to state the accuracy and contingency levels in the initial assessment?

73. If we permit cash flow analysis in the initial assessment, should we prohibit the qualified person from using inferred mineral resources in the cash flow analysis, as proposed? Why or why not? Would there be disadvantages to registrants or investors if the use of inferred mineral resources in an initial assessment's cash flow analysis is prohibited? Would there be advantages to prohibiting the use of inferred resources in an initial assessment's cash flow analysis in the initial assessment?

74. Should we prohibit the use of an initial assessment to support a determination of mineral reserves, as proposed? Why or why not?

4. USGS Circular 831 and 891

In 1980, the US Geological Survey ("USGS") published Circular 831 as an update to USGS Bulletin 1450–A—"Principles of the Mineral Resource Classification System of the U.S. Bureau of Mines and U.S. Geological Survey." In 1983, the USGS published Circular 891—"Coal Resource Classification System of the U.S. Geological Survey," specifically for resource or reserve classification of coal.[209] Consistent with the mission of the USGS, these circulars were mostly suitable for national and regional level reporting of mineral resources and reserves for government planning purposes,[210] and were not intended to be the basis for public company disclosure to investors. Both circulars have been used by companies to classify coal and industrial minerals resources in the United States.[211]

In the past, the staff has not objected to mineral reserve disclosure that used these circulars to classify mineral resources as inferred, indicated or measured resources.[212] We do not believe the use of USGS Circulars 831 and 891 for resource classification in SEC filings would be consistent with the proposed rules. We believe that the CRIRSCO-based mineral resource classification scheme, upon which our proposed mineral resource disclosure rules are modeled, would provide a more appropriate basis for disclosure about a registrant's mineral resources.[213]

In contrast to the Circular's classification system, the proposed definitions require that all disclosed mineral resources must have reasonable prospects of economic extraction. Moreover, the primary criterion for the required mineral resource classification in our proposed rules is the geologic confidence in the estimates based on the geologic evidence (limited, adequate or conclusive). This is in contrast to the primary criterion in the Circulars, which is essentially the extent to which tonnages fall within particular distances from a drill hole or outcrop. Although drill hole spacing may be a factor that informs the qualified person's assessment of geologic confidence, for the purposes of public company disclosure to investors, we do not believe it should be the sole factor.[214]

Request for Comment

75. Are we correct in thinking that use of Circulars 831 and 891 to classify mineral resources would not be appropriate under the proposed rules? Why or why not?

F. Treatment of Mineral Reserves

Guide 7 defines a mineral reserve as "that part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination." [215] The Guide does not, however, delineate the factors that must be considered when making a reserve determination. In contrast, other jurisdictions have adopted the CRIRSCO framework whereby the determination of mineral reserves occurs by applying and evaluating specifically defined "modifying factors" [216] to indicated and measured mineral resources.[217]

In addition, the CRIRSCO-based codes permit the use of either a preliminary feasibility study or feasibility study [218] to establish the economic viability of extraction.[219] Although Guide 7 does not address the issue, the staff has historically requested that registrants provide a final feasibility study to support the determination and disclosure of mineral reserves.

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[209] *See* USGS *Circular 891* 1 (1983), which states that "In 1980, the [USGS and Bureau of Mines] published Circular 831 . . . The circular, which outlines a classification system for all mineral commodities, filled the classification needs of the Bureau of Mines, which was no longer responsible for coal resource classification, and was the basis for this revision of the coal resource classification system by the Geological Survey. The revision, embodied in this report, has two main objectives: (1) To provide detailed information lacking in Bulletin 1450–B; and (2) to provide standard definitions, criteria, guidelines, and methods required for uniform application of the principles outlined in Circular 831." Gordon H. Wood, Jr et. al., U.S. Geological Survey, U.S. Dep't of the Interior, Coal Resource Reclassification System of the U.S. Geological Survey, USGS Circular 891 (1983), which is available at: *http://pubs.usgs.gov/circ/1983/0891/report.pdf.*

[210] *See, e.g.,* USGS *Circular 831* 1 (1980), which states, "The system can be used to report the status of mineral and energy-fuel resources for the Nation or for specific areas." U.S. Geological Survey & U.S. Bureau of Mines, U.S. Dep't of the Interior, Principles of a Resource/Reserve Classification for Minerals: A Revision of the Classification System Published as USGS Survey Bulletin 1450–A, USGS Circular 831 (1980), which is available at: *http://pubs.usgs.gov/circ/1980/0831/report.pdf.*

[211] Although Circular 831's classification system has been largely phased out in metal mining, it is still commonly used in coal and some industrial minerals mining.

[212] Guide 7 prohibits mineral resource disclosure and as such does not provide any guidance (or place any restrictions) on how to classify mineral resources.

[213] The Circulars prescribe strict guidelines to classify mineral resources based on the distance from a drill hole ("drill hole spacing") that do not vary depending on the complexity and specific facts of the deposit. For example, these Circulars define measured (0- to ¼-mile), indicated (¼ to ¾-mile) and inferred (¾- to 3-miles) mineral resources based on drill hole (or outcrop) radii.

[214] *See, e.g.,* Ricardo A. Olea and James A. Luppens, "Modeling Uncertainty in Coal Resource Assessments, With an Application to a Central Area of the Gillette Coal Field," in *USGS Scientific Investigations Report 2014–5196* 1 (2014) (which concluded that an approach that involved establishing confidence limits, similar to the approach used in our proposal, "should be considered realistic improvements over distance methods used for quantitative classification of uncertainty in coal resource, such as U.S. Geological Survey Circular 891").

[215] Paragraph (a)(1) of Guide 7.

[216] The modifying factors applied in this context are the same as the modifying factors applied in the context of the determination of mineral resources. *See* note 103, *supra.*

[217] *See, e.g.,* the CIM Definition Standards at 5–6; the JORC Code pts. 30–31; the SME Guide pts. 40–41; the SAMREC Code pts. 33–34; and the PERC Reporting Standard pts. 30–31.

[218] A preliminary feasibility study is also called a pre-feasibility study. A feasibility study is also called a full, final, comprehensive, or bankable feasibility study.

[219] *See, e.g.,* the CIM Definition Standards at p. 5; the JORC Code pt. 29; the SME Guide pt. 39; the SAMREC Code pt. 32; and the PERC Reporting Standard pt. 29.

These differences between the staff's guidance and the CRIRSCO standards, the latter of which have become widely-accepted in industry practice, may have been a source of confusion for registrants and investors.[220] To address this situation, we propose to revise the definition of mineral reserves to align it generally with the definition under the CRIRSCO-based standards by:

- Adopting the framework of applying modifying factors to indicated or measured mineral resources in order to convert them to mineral reserves; and
- permitting either a pre-feasibility or feasibility study to provide the basis for determining and reporting mineral reserves.

1. The Framework for Determining Mineral Reserves

We propose to establish a framework for mineral reserves determination and disclosure that is based on the following proposed definitions of "mineral reserves," "probable mineral reserves," "proven mineral reserves," and "modifying factors."

We propose to define "mineral reserve" as an estimate of tonnage and grade or quality of indicated or measured mineral resources that, in the opinion of the qualified person, can be the basis of an economically viable project. More specifically, as proposed, a mineral reserve is the economically mineable part of a measured or indicated mineral resource, net of allowances for diluting materials and for losses that may occur when the material is mined or extracted.[221]

Under the proposed rules, the determination that part of a measured or indicated mineral resource is economically mineable would have to be based on a preliminary feasibility (pre-feasibility) or feasibility study conducted by a qualified person applying the modifying factors to indicated or measured mineral resources. Such study would have to demonstrate that, at the time of reporting, extraction of the mineral reserve is economically viable under reasonable investment and market assumptions. Moreover, the study would have to establish a life of mine plan that is technically achievable and economically viable, which would be the basis of determining the mineral reserve.[222]

The proposed rules would provide that, as used in the definition of mineral reserve, "economically viable" means that the qualified person has determined, using a discounted cash flow analysis, or has otherwise analytically determined, that extraction of the mineral reserve is economically viable under reasonable investment and market assumptions.[223] The proposed rules would further explain that, as used in this definition, "investment and market assumptions" includes all assumptions made about the prices, exchange rates, sales volumes and costs that are necessary and are used to determine the economic viability of the reserves.[224]

As proposed, the price used to determine the economic viability of the mineral reserves could not be higher than the average spot price during the 24-month period prior to the end of the fiscal year covered by the study, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period, except in cases where sales prices are determined by contractual agreements. In such a case, the qualified person would be able to use the price set by the contractual arrangement, provided that such price is reasonable[225] and the qualified person discloses that he or she is using a contractual price and discloses the contractual price used.[226]

The proposed rules would adopt the CRIRSCO classification scheme and framework for mineral reserve determination, which subdivides mineral reserves, in order of increasing confidence in the results obtained from the application of the modifying factors to the indicated and measured mineral resources, into probable mineral reserves and proven mineral reserves.[227] Similar to the CRIRSCO classification scheme,[228] we propose to define "probable mineral reserves" as the economically mineable part of an indicated and, in some cases, a measured mineral resource.[229]

The proposed rules would explain that, for a probable mineral reserve, the qualified person's confidence in the results obtained from the application of the modifying factors and in the estimates of tonnage and grade or quality is lower than what is sufficient for a classification as a proven mineral reserve, but is still sufficient to demonstrate that, at the time of reporting, extraction of the mineral reserve is economically viable under reasonable investment and market assumptions.[230] This lower level of confidence can be due either to higher geologic uncertainty when the qualified person converts an indicated mineral resource to a probable mineral reserve or higher risk in the results of the application of modifying factors at the time when the qualified person converts a measured mineral resource to a probable mineral reserve. The proposed rules would further require that a qualified person classify a measured mineral resource as a probable mineral reserve when his or her confidence in the results obtained from the application of the modifying factors to the measured mineral resource is lower than what is sufficient for a proven mineral reserve.[231]

Similar to the CRIRSCO classification scheme,[232] we propose to define "proven mineral reserves" as the economically mineable part of a measured mineral resource.[233] The proposed rules would explain that, for a proven mineral reserve, the qualified person must have a high degree of confidence in the results obtained from the application of the modifying factors and in the estimates of tonnage and grade or quality.[234] In addition, as proposed, a proven mineral reserve can only result from conversion of a measured mineral resource.[235]

We propose to define "modifying factors" as the factors that a qualified person must apply to mineralization or geothermal energy and then evaluate in order to establish the economic prospects of mineral resources, or the economic viability of mineral reserves.[236] Similar to the CRIRSCO framework, a qualified person would have to apply and evaluate modifying factors to convert measured and indicated mineral resources to proven and probable mineral reserves.[237] These factors would include, but not be restricted to, mining, energy recovery and conversion, processing, metallurgical, economic, marketing, legal, environmental, infrastructure, social and governmental factors. The number, type and specific characteristics of the modifying factors that are applied would be a function of and depend upon the mineral, mine, property, or project.[238]

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[220] *See, e.g.,* the SME Petition for Rulemaking at 2, which states, "The SEC's Industry Guide 7 is substantially different from these standards . . . [and] has caused much confusion among mining companies and their investors."

[221] *See* proposed Item 1301(d)(13)(i) of Regulation S–K.

[222] *See* proposed Item 1301(d)(13)(ii) of Regulation S–K.

[223] *See* proposed Item 1301(d)(13)(iii) of Regulation S–K. Whether the investment and market assumptions are "reasonable" will necessarily be a facts and circumstances determination based upon the relevant economic and market factors.

[224] *See* proposed Item 1301(d)(13)(iv) of Regulation S–K.

[225] *See* note 198 for a discussion of when a contractual price may not be a reasonable estimate of the expected annual average price to be achieved for the mined product during each year of the project's life.

[226] *See* proposed Item 1301(d)(13)(iv) of Regulation S–K.

[227] *See* Note to proposed Item 1301(d)(13) of Regulation S–K.

[228] *See, e.g.,* JORC Code pt. 30; CIM Definition Standards at p. 6; and SAMREC Code pt. 33.

[229] *See* proposed Item 1301(d)(18)(i) of Regulation S–K.

[230] *See* proposed Item 1301(d)(18)(ii) of Regulation S–K.

[231] *See* proposed Item 1301(d)(18)(iii) of Regulation S–K.

[232] *See, e.g.,* JORC Code pt. 31; CIM Definition Standards at p. 6; and SAMREC Code pt. 34.

[233] *See* proposed Item 1301(d)(21)(i) of Regulation S–K.

[234] *See* proposed Item 1301(d)(21)(ii) of Regulation S–K.

[235] *See* proposed Item 1301(d)(21)(iii) of Regulation S–K.

For example, applying and evaluating processing factors means the qualified person must examine the characteristics of the mineral resource and determine that the material can be processed economically into saleable product using existing technology. Similarly, applying and evaluating legal factors means the qualified person must examine the regulatory regime of the host jurisdiction to establish that the registrant can comply (fully and economically) with all laws and regulations (*e.g.,* mining, environmental, reclamation and permitting regulations) that are relevant to operating a mineral project using existing technology. The only estimates of grade or quality and tonnages that a registrant can disclose as mineral reserves are those parts of the indicated and measured mineral resources that, after all such relevant factors have been evaluated, can be shown to be part of a viable mineral project.

We also are proposing several instructions about the conversion of mineral resources into mineral reserves.[239] For example, one instruction would explain that, similar to the CRIRSCO framework,[240] if the uncertainties in the results obtained from the application of the modifying factors, which prevented a measured mineral resource from being converted to a proven mineral reserve, no longer exist, then the qualified person may convert the measured mineral resource to a proven mineral reserve.[241]

Another instruction would state that a qualified person cannot convert an indicated mineral resource to a proven mineral reserve unless there is new evidence that justifies conversion of the indicated mineral resource to a measured mineral resource.[242] A third instruction would explain that a qualified person cannot convert an inferred mineral resource to a mineral reserve without first obtaining new evidence that justifies converting it to an indicated or measured mineral resource.[243] These instructions are consistent with the CRIRSCO framework for conversion of mineral resources into mineral reserves.[244]

The proposed framework would require a registrant's disclosure of mineral reserves to be based on a qualified person's detailed evaluation of the modifying factors as applied to indicated or measured mineral resources, which would demonstrate the economic viability of the mining property or project.[245] The proposed instructions would describe the relationship between the different classes of mineral resources and reserves and underscore the incremental nature of mineral resource and reserve determination. For example, a qualified person would not be able to use inferred mineral resources to support a determination of mineral reserves unless new evidence (*e.g.,* data and analysis) has first caused an increased confidence in the geologic evidence[246] sufficient to reclassify those resources as indicated or measured mineral resources. Similarly, a qualified person would not be able to convert an indicated mineral resource to a proven mineral reserve without first determining that conclusive, rather than just adequate, geological evidence exists to support reclassification to a measured mineral resource.

This proposed framework for mineral reserve determination and disclosure would be more detailed and structured than Guide 7's approach. Although Guide 7 similarly defines a mineral reserve as that part of a mineral deposit that can be economically and legally extracted or produced, it does not specify the level of geologic evidence that must exist or the factors that must be considered to convert the deposit to a mineral reserve.

In contrast, the proposed framework would only permit estimates of mineral reserves that result from the conversion of indicated and measured mineral resources for which adequate and conclusive geologic evidence exist. It would also prohibit the use of inferred mineral resources, for which there is only limited geologic evidence, to support a determination of mineral reserves. Finally, the proposed framework would require the qualified person to disclose the specific mining, processing, metallurgical, environmental, economic, legal and other applicable factors, the detailed evaluation of which has led the qualified person to conclude that extraction of the mineral reserve is economically viable.

As a result, we believe that the proposed framework would result in clearer and more accurate disclosure about the economic viability of a registrant's mineral deposits, which would benefit investors. The proposed framework would also be substantially similar to the CRIRSCO framework. As such, its adoption should enhance consistency in mining disclosure across jurisdictions, facilitating comparability for investors. It also would reduce reporting costs for the numerous mining registrants that are dual-listed and have been subject to different U.S. and CRIRSCO-based disclosure requirements. The main difference between the proposed framework for determining mineral reserves and the CRIRSCO framework is the requirement to use commodity prices that are no higher than the 24-month trailing average.

We are proposing a definition of mineral reserve as an estimate of tonnage and grade or quality that is net of allowances for diluting materials and mining losses. This is in contrast to the definition of mineral reserve under the CRIRSCO standards, which includes diluting materials in reserve estimates. We are proposing a net estimate for reserves because our proposed rules would require disclosure of mineral reserves at three points of reference: In-situ,[247] plant or mill feed, and saleable product.[248] We believe estimates that are exclusive of diluting materials and mining losses would provide a clearer picture of the efficiency of the processing method, which we believe is important for investors.[249] Because this difference is relatively minor (excluding diluting materials is a minor computational step in reserve estimation), we do not believe it would impose a significant additional compliance burden for registrants.

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[236] *See* proposed Item 1301(d)(15) of Regulation S–K.

[237] *See, e.g.,* JORC Code pt. 12; CRIRSCO International Reporting Template pt. 12; and SAMREC Code pt. 12.

[238] *See* proposed Item 1301(d)(15) of Regulation S–K.

[239] We discuss additional instructions about the conversion of mineral resources into mineral reserves in the discussion of the requirements for pre-feasibility and feasibility studies below. *See* section II.F.2, *infra.*

[240] *See, e.g.,* JORC Code pt. 32; CRIRSCO International Reporting Template pt. 33; and SAMREC Code pt. 35.

[241] *See* Instruction 11 to proposed Item 1302(d) of Regulation S–K.

[242] *See* Instruction 12 to proposed Item 1302(d) of Regulation S–K.

[243] *See* Instruction 13 to proposed Item 1302(d) of Regulation S–K.

[244] *See, e.g.,* JORC Code pt. 32; CRIRSCO International Reporting Template pt. 33; and SAMREC Code pt. 35.

[245] *See* proposed Item 1302(d) of Regulation S–K.

[246] *See* the definitions of limited, adequate and conclusive geologic evidence under the respective definitions of inferred, indicated and measure mineral resource in proposed Item 1301(d) of Regulation S–K.

[247] In-situ means "in its original place." It is used in this context to refer to mineral reserves estimated as in-place tons.

As discussed in greater detail below,[250] under the proposed rules, a qualified person's determination of mineral reserves would have to be based on either a preliminary (pre-feasibility) or feasibility study. In either case, the required technical study would have to include a technically and economically feasible life of mine plan that supports the study's demonstration that, at the time of reporting, extraction of the mineral reserve is economically viable under reasonable investment and market assumptions. We are including this life of mine requirement to provide clear guidance concerning the determination of mineral reserves to qualified persons and registrants. We do note, however, that many registrants already conduct life of mine plans to support their reserve disclosure.[251]

As proposed, the qualified person must demonstrate economic viability by conducting a discounted cash flow analysis or other similar financial analysis using a commodity price that is no higher than the 24 month trailing average price model proposed for the determination of mineral resources.[252]

When discussing the analysis in the technical report summary, the qualified person must disclose the assumptions made about prices, exchange rates, discount rate, sales volumes and costs necessary to determine the economic viability of the reserves.[253] The proposed requirement to conduct a discounted cash flow or other similar analysis is consistent with the requirement under the CRIRSCO-based codes that mineral reserve determination must be based on a financial analysis under reasonable assumptions demonstrating that extraction of the reserve is economically viable.[254] In addition, the staff has historically requested such financial analysis to support disclosure of mineral reserves. As such, it should not significantly alter existing disclosure practices.

Request for Comment

76. Should we establish a framework for mineral reserves determination and disclosure, as proposed? Why or why not? Is there another framework that would be preferable to the proposed framework? If so, what would be the advantages and disadvantages of the alternative framework?

77. Should we define "mineral reserve," as proposed? Are there conditions that we should include in the definition of mineral reserves instead of, or in addition to, those proposed to be included in the definition? Are there any conditions that we should exclude from the definition of mineral reserves? For example, should we modify the condition that mineral reserves be based on a pre-feasibility or feasibility study to only permit a feasibility study? Should we exclude in its entirety the condition that mineral reserves be based on a feasibility or pre-feasibility study? Are there terms that we should define differently? For example, should we define a mineral reserve as an estimate of tonnage and grade or quality that includes diluting materials and allowances for losses, instead of a net estimate, as proposed? Why or why not?

78. Should we explicitly include a life of mine plan disclosure requirement in the technical studies required to support a determination of mineral reserves, as proposed? Why or why not?

79. Should we require the use of a discounted cash flow analysis or other similar analysis to establish the economic viability of a mineral reserve's extraction, as proposed? Why or why not? If so, should we require the use of a price that is no higher than a trailing 24 month average spot price in the discounted cash flow analysis, except in cases where sales prices are determined by contractual agreements, as proposed? Is there some other period (*e.g.,* 12 or 36 months) or measure that should determine the price used in the discounted cash flow analysis?

80. Should we allow registrants to use an alternate price in addition to a price that is no higher than a trailing 24 month average spot price, as long as they disclose the alternate price and their justification? Alternatively, should we require every registrant to use a fixed 24 month trailing average price with the option to use an alternate price(s) that is reasonably achieved? Are there other pricing methods (*e.g.,* management's long term view or using spot, forward or futures prices at the end of the last fiscal year to determine the ceiling price allowed) that we should require or permit registrants to use in discounted cash flow analysis? Would such pricing methods be transparent, easy for registrants to apply and investors to understand, and to the extent practicable, provide some degree of comparability?

81. Should we define the terms "probable mineral reserve" and "proven mineral resource," as proposed? Why or why not? If not, how should we modify these definitions?

82. Should we define "modifying factors," as proposed? Are there any factors that we should include in the definition of modifying factors instead of or in addition to those already included in the definition? Are there any factors that we should exclude from the definition?

83. Should we adopt the above discussed instructions, as proposed? Why or why not?

2. The Type of Study Required To Support a Reserve Determination

i. Preliminary Feasibility Study

Like the CRIRSCO framework for mineral reserve determination the proposed rules would require either a preliminary feasibility study or a feasibility study in support of a determination of mineral reserves.[255] We propose to define a "preliminary feasibility study" (or "pre-feasibility study") as a comprehensive study of a range of options for the technical and economic viability of a mineral project that has advanced to a stage where a qualified person has determined (in the case of underground mining) a preferred mining method, or (in the case of surface mining) a pit configuration, and in all cases has determined an effective method of mineral processing and an effective plan to sell the product.[256]

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[248] *See* proposed Item 1304(b)(7) of Regulation S–K and Instruction 4 to proposed Item 601(b)(96)(iv)(B)(14) of Regulation S–K.

[249] The efficiency of the processing method demonstrates how well the registrant converts the resource into saleable products.

[250] *See* section II.F.2, *infra.*

[251] In this regard, we note that the SME Guide expressly requires a life of mine plan in its technical study. *See* the SME Guide, Table 1, at 49 ("Mining method(s), mine plans and production schedules defined for the life of the project" are required to support mineral reserve disclosure.) Under the CRIRSCO-based codes, the qualified person has to develop mine plans in order to estimate cash flows, which are required by the codes for the financial analysis necessary to support mineral reserve disclosure. The cash flows must be based on costs and revenues associated with planned production over the life of the project. *See* JORC pt. 29, which states that "[d]eriving an Ore Reserve without a mine design or mine plan through a process of factoring of the Mineral Resource is unacceptable. . . The studies will have determined a mine plan and production schedule that is technically achievable and economically viable and from which the Ore Reserves can be derived."

[252] Consistent with this proposed requirement, the proposed rules would not permit a registrant to provide a supplemental mineral reserve determination (*i.e.,* an estimate based upon a price higher than the 24 month trailing average).

[253] *See* Instruction 3 to proposed Item 601(b)(96)(iv)(B)(21).

[254] *See, e.g.,* the SME Guide pt. 39 ("The term 'economically viable' implies that extraction of the Mineral Reserve has been determined or analytically demonstrated (*e.g.,* such as by a cash flow in the report) to be viable and justifiable under reasonable investment and market assumptions.") *See also* the JORC Code pt. 29 ("The term 'economically mineable' implies that extraction of the Ore Reserves has been demonstrated to be viable under reasonable financial assumptions").

[255] *See* proposed Item 1302(d) of Regulation S–K.

The proposed rules would further provide that a pre-feasibility study must include a financial analysis based on reasonable assumptions, based on appropriate testing, about the modifying factors and the evaluation of any other relevant factors that are sufficient for a qualified person to determine if all or part of the indicated and measured mineral resources may be converted to mineral reserves at the time of reporting. The study's financial analysis must have the level of detail necessary to demonstrate, at the time of reporting, that extraction is economically viable.[257] The proposed rules would also note that, while a pre-feasibility study is less comprehensive and results in a lower confidence level than a feasibility study, a pre-feasibility study is more comprehensive and results in a higher confidence level than an initial assessment.[258]

As discussed in greater detail below, we propose to define a "feasibility study"[259] as a comprehensive technical and economic study of the selected development option for a mineral project, which includes detailed assessments of all applicable modifying factors together with any other relevant operational factors, and detailed financial analysis that are necessary to demonstrate, at the time of reporting, that extraction is economically viable.[260] The proposed rules would further provide that, similar to the CRIRSCO framework,[261] a feasibility study is more comprehensive, with a higher degree of accuracy, and yielding results with a higher level of confidence, than a pre-feasibility study. Under the proposed rules, it must contain mining, infrastructure, and process designs completed with sufficient rigor to serve as the basis for an investment decision or to support project financing.[262]

As proposed, the key differences between a pre-feasibility study and a final or bankable feasibility study are:

- A pre-feasibility study discusses a "range of options" for the technical and economic viability of a mineral project whereas a final feasibility study focuses on a particular option selected for the development of the project;
- a pre-feasibility study generally has a less detailed assessment of the modifying factors necessary to demonstrate that extraction is economically viable than the corresponding assessment in a final feasibility study; and
- a pre-feasibility study generally has a less detailed financial analysis that is based on less firm budgetary considerations (*e.g.*, historical costs rather than actual, firm quotations for major capital items) and more assumptions than the financial analysis in a final feasibility study.

Despite these differences, we believe that revising our rules to allow a pre-feasibility study to support the determination and disclosure of mineral reserves is appropriate because of the expected resulting benefits for both registrants and investors. Permitting the use of a pre-feasibility study to determine mineral reserves under our rules would align the Commission's disclosure regime with those under the CRIRSCO-based codes and, as such, provide greater uniformity in global mining disclosure requirements to the benefit of both mining registrants and their investors. Permitting the use of a pre-feasibility study could also significantly reduce a mining registrant's costs in connection with the determination of mineral reserves.

Although the use of a pre-feasibility study could increase the uncertainty regarding a registrant's disclosure about mineral reserves, we believe that any such uncertainty would be reduced by the requirements included in the proposed definitions and corresponding proposed instructions.

First, as proposed, the pre-feasibility study must include a financial analysis at a level of detail sufficient to demonstrate the economic viability of extraction. A proposed instruction would state that the pre-feasibility study must include an economic analysis that supports the property's economic viability as assessed by a detailed discounted cash flow analysis.[263] This economic analysis must describe in detail applicable taxes and provide an estimate of revenues, which in certain situations (*e.g.* where the products are not traded on an exchange or no established market or sales contract exists) must be based on at least a preliminary market study.[264] We believe that this proposed level of detail for the economic analysis in a pre-feasibility study is consistent with current practice in the industry and comparable to the requirements for mineral reserve disclosure based on a pre-feasibility study in the CRIRSCO-based jurisdictions.[265]

Second, the proposed rules would require a qualified person to include the justification for using a pre-feasibility study, if one is used, instead of a final feasibility study.[266] This requirement would help ensure that investors are fully informed of the qualified person's basis for determining that a pre-feasibility study is adequate given the particular facts and circumstances. It also should encourage a qualified person to consider carefully his or her decision to use a pre-feasibility study to support the determination of mineral reserves.

Third, another proposed instruction would require the use of a final feasibility study in high risk situations.[267] For example, a final feasibility study would be required in situations where the project is the first in a particular mining district with substantially different conditions than existing company projects, such as environmental and permitting restrictions, labor availability and skills, remoteness, and unique mineralization and recovery methods.[268] In such cases, the qualified person would have to use a feasibility study in order to achieve the level of confidence necessary for disclosing mineral reserves because, as discussed above, a pre-feasibility study is less comprehensive and yields results with a lower level of confidence than a feasibility study. We are concerned that using a pre-feasibility study in such high risk situations would not sufficiently reduce the uncertainty surrounding the results of the application of modifying factors to support disclosure of mineral reserves. We note that the SME Guide reflects a similar concern.[269]

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[256] *See* proposed Item 1301(d)(16)(i) of Regulation S–K. This proposed definition is similar to the comparable definition under the CRIRSCO-based codes. *See, e.g.,* JORC Code pt. 39; CRIRSCO International Reporting Template pt. 38; and SAMREC Code at p. 3.

[257] *See* proposed Item 1301(d)(16)(ii) of Regulation S–K.

[258] *See* Note to proposed Item 1301(d)(16) of Regulation S–K.

[259] As proposed, terms such as "full, final, comprehensive, bankable, or definitive" feasibility study are equivalent to a feasibility study. *See* Note to proposed Item 1301(d)(7) of Regulation S–K.

[260] *See* proposed Item 1301(d)(7)(i) of Regulation S–K. This proposed definition is similar to the comparable definition under the CRIRSCO-based codes. *See, e.g.,* JORC Code pt. 40; CRIRSCO International Reporting Template pt. 39; and SAMREC Code at p. 2.

[261] *Id.*

[262] *See* proposed Item 1301(d)(7)(ii) of Regulation S–K; *see also* Note to proposed Item 1301(d)(7)(ii) of Regulation S–K.

[263] *See* Instruction 4 to proposed Item 1302(d) of Regulation S–K.

[264] As defined in proposed Item 1301(d)(17) of Regulation S–K, a preliminary market study is a study that is sufficiently rigorous and comprehensive to determine and support the existence of a readily accessible market for the mineral. It must, at a minimum, include product specifications based on preliminary geologic and metallurgical testing, supply and demand forecasts, historical prices for the preceding five or more years, estimated long term prices, evaluation of competitors (including products and estimates of production volumes, sales, and prices), customer evaluation of product specifications, and market entry strategies. The study must provide justification for all assumptions. It can, however, be less rigorous and comprehensive than a final market study, which is required for a full feasibility study.

[265] For example, the CIM Definition Standards at 3 states that the standard "requires the completion of a Preliminary Feasibility Study as the minimum prerequisite for the conversion of Mineral Resources to Mineral Reserves." Also, CIM's Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines 45 (2003), in discussing work to determine economic merits of a deposit, states "[t]his work specifically includes mining engineering evaluations and, most importantly, the preparation of an appropriate cash flow analysis. These aspects are normal components of both feasibility studies and preliminary feasibility studies."

[266] *See* proposed Item 1302(d) of Regulation S–K.

Moreover, similar to provisions in the CRIRSCO-based codes, an instruction to the proposed rules would prohibit a qualified person from using inferred mineral resources in the pre-feasibility study's financial analysis.[270]

Other proposed instructions are designed to help ensure that the pre-feasibility study is sufficiently rigorous to support a conclusion that extraction of the reserve is economically viable. For example, one proposed instruction would explain that the factors to be considered in a pre-feasibility study are typically the same as those required for an initial assessment, but considered at a greater level of detail or at a later stage of development.[271] For example, a pre-feasibility study would have to define, analyze or otherwise address in detail:

- The required access roads, infrastructure location and plant area, and the source of all utilities (*e.g.*, power and water) required for development and production;
- the preferred underground mining method or surface mine pit configuration, with detailed mine layouts drawn for each alternative;
- the bench lab tests [272] that have been conducted, the process flow sheet, equipment sizes, and general arrangement that have been completed, and the plant throughput;
- the environmental compliance and permitting requirements or interests of agencies, non-governmental organizations, communities and other stakeholders, the baseline studies, and the plans for tailings disposal, reclamation and mitigation, together with an analysis establishing that permitting is possible; and
- any other reasonable assumptions, based on appropriate testing, on the modifying factors sufficient to demonstrate that extraction is economically viable.[273]

Another proposed instruction would provide that the operating and capital cost estimates in a pre-feasibility study must have an accuracy level and a contingency range that are significantly narrower than those permitted to support a determination of mineral resources. According to this instruction, operating and capital cost estimates in a pre-feasibility study must, at a minimum, have an accuracy level of approximately ±25% and a contingency range not exceeding 15%.[274] The instruction would require the qualified person to state the accuracy level and contingency range in the pre-feasibility study.

These latter two instructions (addressing the level at which the modifying factors are assessed and the appropriate accuracy level and contingency range for operating and capital costs) are consistent with current industry practice and comparable to requirements for the use of a pre-feasibility study in the CRIRSCO-based jurisdictions.[275] As such, the proposed instructions would help ensure that a registrant's use of a pre-feasibility study in SEC filings meets the industry established minimum level of detail and rigor sufficient to determine reserves.

Another proposed instruction would address whether and when a registrant would be required to take additional steps to support its determination of mineral reserves. That instruction would explain that a determination of "mineral reserves" does not necessarily require that extraction facilities are in place or operational, that the company has obtained all necessary permits, or that the company has entered into sales contracts for the sale of mined products. The instruction would explain, however, that such determination does require that the qualified person has, after reasonable investigation, not identified any obstacles to obtaining permits and entering into the necessary sales contracts, and reasonably believes that the chances of obtaining such approvals and contracts in a timely manner are highly likely.[276] The instruction would also state that, when assessing mineral reserves, the qualified person must take into account the potential adverse impacts, if any, from any unresolved material matter on which extraction is contingent and which is dependent on a third party. Under the proposed instruction, a determination of mineral reserves does not necessarily mean that extraction facilities have been built, permits have been obtained or that sales contracts have been entered into. Rather, for a determination that mineral reserves exist, it is sufficient for the qualified person to conclude, after reasonable investigation, that there are no obstacles to obtaining permits and revenues from the mine's products. This proposed instruction is consistent with similar guidance under the CRIRSCO-based codes.

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[267] *See* Instruction 7 to proposed Item 1302(d) of Regulation S–K.

[268] *See* Instruction 7 to proposed Item 1302(d) of Regulation S–K.

[269] The SME Guide (2014) pt. 50 states: "The Guide does not require that a Feasibility Study has been undertaken to convert Mineral Resources to Mineral Reserves, but it does require that at least a Pre-feasibility Study will have determined that the mining project is technically and economically feasible, and that relevant Modifying Factors have been considered for such a conversion. However, there may be some projects for which the Competent Person determines that a Feasibility Study, instead of a Pre-Feasibility Study, is required before the Mineral Resources may be converted to Mineral Reserves due to uncertainties in the Modifying Factors."

[270] *See* Instruction 2 to proposed Item 1302(d) of Regulation S–K.

[271] *See* Instruction 3 to proposed Item 1302(d) of Regulation S–K. These factors are also set forth in proposed Table 1, which is referenced in the instructions to proposed Items 1302(c) and (d) of Regulation S–K.

[272] In the design of industrial process plants, engineers test the design concepts at increasingly larger scales. An initial step in this process is to conduct laboratory tests using a laboratory simulation of the conceptual process plant (referred to as bench lab tests). If successful, engineers then conduct tests using a small scale field plant that can process bulk samples (referred to as pilot or demonstration plant tests). It is only when these tests are successful that designs for full scale industrial plants are approved and the plants are constructed. Feasibility studies, depending on the stage, involve bench lab scale or pilot scale tests. *See, e.g.*, Christopher G. Morris, *Academic Press Dictionary of Science and Technology* 244 (1992) which defines bench-scale testing as "[t]he practice of examining materials, methods, or chemical processes on a scale that can be performed on a work bench." *See also* American Geological Institute, *Dictionary of Mining, Mineral, and Related Terms* 406 (2d ed. 1997), which defines a pilot plant as "a small-scale processing plant in which representative tonnages of ore can be tested under conditions which foreshadow (or imitate) those of the full-scale operation proposed for a given ore."

[273] *See* Instruction 3 to proposed Item 1302(d) of Regulation S–K.

[274] *See* Instruction 6 to proposed Item 1302(d) of Regulation S–K. These accuracy level and contingency range requirements are also provided in proposed Table 1.

[275] *See, e.g.*, the SME Guide, Tables 1 and 2.

[276] *See* Instruction 1 to proposed Item 1302(d) of Regulation S–K.

Additionally, the proposed instructions would address when the completion of a preliminary or final market study, as part of a pre-feasibility or feasibility study, may be required to support a determination of mineral reserves. Specifically, proposed Instruction 1 to Item 1302(d) would explain that the determination of mineral reserves may, in certain circumstances, require the completion of a preliminary market study (in the context of a pre-feasibility study) or a final market study (in the context of a final feasibility study) to support the qualified person's conclusions about the chances of obtaining revenues from sales. As proposed, a preliminary or final market study would be required where the mine's product cannot be traded on an exchange, there is no other established market for the product, and no sales contract exists. We believe that this proposed instruction would result in more detailed disclosure, when required under the circumstances, concerning the basis for the qualified person's conclusions as to whether the deposit is a mineral reserve.[277]

Finally, another proposed instruction would require a pre-feasibility study to identify sources of uncertainty that require further refinement in a final feasibility study.[278] This requirement is intended to elicit appropriate disclosure about the areas of risk present in the pre-feasibility study, which should help investors in assessing the reliability of the study.

We believe that the proposed rule and its related proposed instructions, taken as a whole, would sufficiently mitigate the level of risk resulting from permitting the use of a pre-feasibility study to support the determination and disclosure of mineral reserves. As such, we believe it would be appropriate to permit the use of a pre-feasibility study for reserve determination and disclosure.

ii. Feasibility Study

As proposed, a feasibility study is a comprehensive technical and economic study of the selected development option for a mineral project.[279] Because of the comprehensiveness and level of detail required for a feasibility study, as provided under the proposed definition of feasibility study and similar to the comparable definition under the CRIRSCO-based codes,[280] the results of the study may serve as the basis for a final decision by a proponent or financial institution to proceed with, or finance, the development of the project.[281]

We are proposing several instructions regarding the use of a feasibility study to support the determination and disclosure of mineral reserves. One proposed instruction would require a feasibility study to contain the application and description of all relevant modifying factors in a more detailed form and with more certainty than a pre-feasibility study.[282] Pursuant to that instruction, a feasibility study would have to define, analyze or otherwise address in detail:

- Final requirements for site infrastructure, including well-defined access roads, finalized plans for infrastructure location, plant area, and camp or town site, and the established source of all required utilities (*e.g.*, power and water) for development and production;
- a finalized mining method, including detailed mine layouts and final development and production plan for the preferred alternative with the required equipment fleet specified, together with detailed mining schedules, construction and production ramp up, and project execution plans;
- completed detailed bench lab tests and a pilot plant test,[283] if required, based on risk, in addition to final requirements for process flow sheet, equipment sizes, general arrangement and the final plant throughput;
- the final identification and detailed analysis of environmental compliance and permitting requirements, including the finalized interests of agencies, NGOs, communities and other stakeholders, together with the completion of baseline studies and finalized plans for tailings disposal, reclamation and mitigation; and
- detailed assessments of other modifying factors necessary to demonstrate that extraction is economically viable.[284]

Another proposed instruction[285] would require a feasibility study to include an economic analysis that, in addition to describing taxes in detail and assessing economic viability by a detailed discounted cash flow analysis, also estimates revenues based on at least a final market study[286] or possible letters of intent to purchase.

A third proposed instruction would require operating and capital cost estimates in a feasibility study, at a minimum, to have an accuracy level of approximately ±15% and a contingency range not exceeding 10%.[287] As proposed, the qualified person would have to state the accuracy level and contingency range in the feasibility study.

These proposed requirements for the use of a feasibility study to support mineral reserve estimates are intended to promote accurate and uniform disclosure of mineral reserves in SEC filings, which should benefit investors as well as registrants. As proposed, the requirements concerning the accuracy level and contingency range for operating and capital cost estimates, and level of detail or stage of development for the evaluation of modifying factors, are comparable to those required for the use of a feasibility study to support mineral reserve estimates under the CRIRSCO-based codes.[288] We believe aligning the U.S. requirements with international standards would benefit investors and registrants by promoting uniformity in mining disclosure standards. In addition, the proposed instructions are generally consistent with staff guidance for the use of a feasibility study to support a determination and disclosure of mineral reserves. Accordingly, we do not believe that adoption of the proposed definition of feasibility study and the corresponding proposed instructions would significantly change existing disclosure practices of registrants.

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[277] *See* Instruction 1 to proposed Item 1302(d) of Regulation S–K. Cf. Instruction 4 to proposed Item 1302(d) of Regulation S–K, which would otherwise permit a pre-feasibility study to be based on a preliminary market study, and Instruction 9 to proposed Item 1302(d) of Regulation S–K, which permits a feasibility study to be based on "a final market study or possible letters of intent to purchase."

[278] *See* Instruction 5 to proposed Item 1302(d) of Regulation S–K.

[279] *See* proposed Item 1301(d)(7) of Regulation S–K.

[280] *See, e.g.*, JORC Code pt. 40; CRIRSCO International Reporting Template pt. 39; and SAMREC Code at p. 2.

[281] *See* proposed Item 1301(d)(7)(i) of Regulation S–K.

[282] *See* Instruction 8 to proposed Item 1302(d) of Regulation S–K.

[283] *See* note 272, *supra*.

[284] In addition to Instruction 8 of proposed Item 1302(d), proposed Table 1 also addresses these factors.

[285] *See* Instruction 9 to proposed Item 1502(d) of Regulation S–K.

[286] As defined in proposed Item 1301(d)(8) of Regulation S–K, a final market study is a comprehensive study to determine and support the existence of a readily accessible market for the mineral. It must, at a minimum, include product specifications based on final geologic and metallurgical testing, supply and demand forecasts, historical prices for the preceding five or more years, estimated long term prices, evaluation of competitors (including products and estimates of production volumes, sales, and prices), customer evaluation of product specifications, and market entry strategies or sales contracts. The study must provide justification for all assumptions, which must include all material contracts required to develop and sell the reserves.

[287] *See* Instruction 10 to proposed Item 1502(d) of Regulation S–K; *see also* proposed Table 1.

[288] *See, e.g.*, the SME Guide, Tables 1 and 2.

Request for Comment

84. Should we define "preliminary feasibility study" and "feasibility study," as proposed? Are there any terms and conditions that we should include instead of or in addition to those included in the proposed definitions? Are there any terms or conditions under each definition that we should exclude?

85. Should we permit the use of either a pre-feasibility study or a feasibility study to support the determination and disclosure of mineral reserves, as proposed? Why or why not?

86. Should we require qualified persons to use a feasibility study in situations where the risk is high, as proposed? Why or why not? Are there other conditions, in addition to or in lieu of high risk situations, where we should require a feasibility study in support of mineral reserve disclosure?

87. Should we adopt the proposed instructions about the use of a pre-feasibility study to support the determination and disclosure of mineral reserves? Are there any instructions that we should provide instead of or in addition to the proposed instructions for such use of a pre-feasibility study? Are there any instructions that we should exclude? Would the proposed instructions mitigate the risk of less certain disclosure that could result from the use of a pre-feasibility study to support the determination and disclosure of mineral reserves? If not, why not?

88. Should we adopt the proposed instructions for the use of a feasibility study to support the determination and disclosure of mineral reserves? Are there any instructions that we should provide instead of or in addition to the proposed instructions for such use of a feasibility study? Are there any instructions that we should exclude?

89. As part of the instructions for pre-feasibility and feasibility studies, should we define preliminary and final market studies as proposed?

G. Specific Disclosure Requirements

Item 102 refers issuers "engaged in significant mining operations" to Guide 7. Guide 7 in turn calls for the disclosure of certain items for each "mine, plant or other significant property" in which the registrant has an economic interest.[289] As written, the current rules and guidance presume that if a registrant's mining operations are "significant," investors need and registrants should provide disclosure on every property. Neither Item 102 nor Guide 7 contemplates the situation where a registrant has significant mining operations with multiple mining properties, some or all of which may not be individually significant. As such, neither addresses the disclosure required in that situation. In practice, however, there are registrants that have a large number of properties, such that providing disclosure on all properties may not be practicable or provide any meaningful benefit to investors. In such circumstances, on a case by case basis as part of the filing review process, and when appropriate under the specific facts and circumstances, the staff has not objected if a registrant with multiple mining properties provides summary disclosure that encompasses all of its properties instead of on a property by property basis. There is, however, no Commission rule that registrants can use to determine when summary disclosure would be appropriate. In addition, this informal approach can lead to inconsistent disclosure as Guide 7 does not address whether and to what extent its disclosure items for each individual property also apply for summary disclosure purposes.

1. Requirements for Summary Disclosure

We believe that, for registrants with economic interests in multiple mining properties, investors would benefit from an overview of the mining operations in addition to a property by property description. We believe that this would also result in more efficient and more effective disclosure, as registrants would be able to provide summary disclosure about all properties where some or all are not individually material. As such, we are proposing that registrants that own two or more mining properties must provide summary disclosure of their mining operations.[290]

The summary disclosure would include a map or maps showing the locations of all mining properties.[291] We believe the proposed requirement for a map showing the location of all mining properties would provide investors a point of reference to assess the geographic and socio-political risks associated with the registrant's mining operations.[292]

The proposed summary disclosure would also include a presentation, in tabular form, of certain specified information about the 20 properties with the largest asset values (or fewer, if the registrant has an economic interest in fewer than 20 mining properties),[293] and a summary, in tabular form, of all mineral resources and reserves at the end of the most recently completed fiscal year.[294] We believe that the proposed requirement to disclose property-specific information for a registrant's 20 largest properties based on asset value would provide investors with an appropriately comprehensive and thorough understanding of a registrant's mining operations. In this regard, we think it is likely that, for registrants having a relatively small number of properties (*e.g.,* 20–30), the proposed requirement would capture all or most of their mining properties. For those registrants with a higher number of properties, we believe the 20 largest properties based on asset value are likely to capture most of their material properties and as such provide an appropriately comprehensive overview of the registrants' mining operations.

As proposed, for each of the properties required to be included in the summary disclosure, a registrant would have to identify the property, report the total production from the property for the three most recently completed fiscal years,[295] and disclose the following information:

- The location of the property;
- the type and amount of ownership interest;

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[289] *See* paragraph (b) of Guide 7.

[290] *See* proposed Item 1303(a) of Regulation S–K. The registrant would be required to provide the summary disclosure for all properties that the registrant owns or in which it has, or it is probable that it will have, a direct or indirect economic interest. It also would have to provide summary disclosure for properties that it operates, or it is probable that it will operate, under a lease or other legal agreement that grants the registrant ownership or similar rights that authorize it, as principal, to sell or otherwise dispose of the mineral. Further, a registrant would have to provide summary disclosure for properties for which it has, or it is probable that it will have, an associated royalty or similar right.

[291] *See* proposed Item 1303(b)(1) of Regulation S–K.

[292] Item 102 requires registrants to provide "appropriate maps" disclosing "the location" of significant properties, but does not address whether or when registrants with multiple properties, none of which are material, should provide a map (or maps) showing the location of all its mining properties. We believe that the proposed requirement, which is consistent with current staff guidance, would provide investors with beneficial information but not significantly impact current disclosure practices.

[293] *See* proposed Item 1303(b)(2) of Regulation S–K.

[294] *See* proposed Item 1303(b)(3) of Regulation S–K.

[295] As proposed, a registrant with only a royalty interest would have to provide only the portion of the production that led to royalty income for each of the three most recently completed fiscal years. *See* proposed Instruction 2 to proposed Item 1303(b)(2) of Regulation S–K.

- the identity of the operator;
- title, mineral rights, leases or options and acreage involved;
- the stage of the property (exploration, development or production);
- key permit conditions;
- mine type and mineralization style; and
- processing plant and other available facilities.

For the purpose of determining the registrant's 20 largest properties, a registrant would be permitted to treat multiple mines with interrelated mining operations[296] as one mining property.[297] For example, multiple mines that share the same processing plant or other facilities, prior to the first point of material external sale, could be considered a single property.[298]

Guide 7 currently calls for the disclosure of all of the above items of information. We continue to believe that these items are important to the description of, and necessary to an understanding of, a mining property. The summary information required about each of the 20 largest properties, by asset value, however, would be less than what we are proposing to require for individual material properties. For example, we are not proposing to require summary information on the exploration work carried out and material exploration results in the reporting period.[299] Nevertheless, we believe that, for these 20 properties, the proposed disclosure is sufficient to present a reasonably comprehensive summary of the registrant's mining operations. In order to standardize the disclosure, facilitate a registrant's compliance with the disclosure requirements, and enhance an investor's understanding of this information, we are proposing that a registrant must provide this information in tabular form using the format of the following table, designated as Table 2:[300]

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[296] *See* the definition of mining operations in Instruction 1 to proposed Item 1301(b) of Regulation S–K.

[297] *See* Instruction 1 to proposed Item 1303(b)(2) of Regulation S–K.

[298] Registrants could take a similar approach when determining what is "a property" for the purposes of determining an "individual property" under proposed Item 1304 of Regulation S–K, as discussed in section II.G.2, *infra*.

[299] *See* section II.G.2, *infra*, for a discussion of the required disclosure for individual material properties.

[300] *See* proposed Table 2, which follows Instruction 2 to proposed Item 1303(b)(2) of Regulation S–K.

Table 2. Brief Description of the 20 Mining Properties with the Highest Asset Values

Mine or Property	Location	Type and amount of ownership	Operator	Title, mineral rights, leases or options and acreage	Stage[1]	Key permit conditions	Mine type and mineralization style	Processing plant and other facilities	Production for fiscal year ending mm/dd/yy[2]	Production for fiscal year ending mm/dd/yy[2]	Production for fiscal year ending mm/dd/yy[2]
Property 1											
Property 2											
⋮											
Property 20											
All other properties[3]											

[1] Exploration, development or production

[2] Use these columns to disclose production for the last three fiscal years

[3] State the number of properties that make up the other properties.

In addition, under the proposed rules, a registrant would have to provide a summary of its mineral resources and mineral reserves at the end of its most recently completed fiscal year, by commodity and geographic area, and for each property containing 10% or more of the registrant's mineral reserves or 10% or more of the registrant's combined measured and indicated mineral resources. The registrant would have to provide this summary for each class of mineral reserves (probable and proven) and resources (inferred, indicated and measured), together with total mineral reserves and total measured and indicated mineral resources.[301] As proposed, all mineral reserves and resources reported in the summary table must be based on, and accurately reflect, information and supporting documentation prepared by a qualified person.

We believe that this proposed requirement would provide investors with information necessary to understand a registrant's material mining operations at fiscal year's end.[302] Such information would, for example, enable investors to understand and evaluate the registrant's ability to replenish depleting mineral reserves, a well-established measure of financial performance in mining.[303] The breakdown of the mineral resources and reserves by category and source (geographic area and property) also would provide investors with a measure of the associated risk. In order to standardize the disclosure, facilitate a registrant's compliance with the disclosure requirements, and enhance an investor's understanding of this information, we are proposing that a registrant must provide this information in tabular form using the format of the following table, designated as Table 3:[304]

TABLE 3—SUMMARY MINERAL RESOURCES AND RESERVES FOR THE FISCAL YEAR ENDING [DATE] BASED ON [PRICE][1]

	Proven mineral reserves	Probable mineral reserves	Total mineral reserves	Measured mineral resources	Indicated mineral resources	Measured + Indicated mineral resources	Inferred mineral resources
Commodity A							
Geographic area A.							
Geographic area B.							
Mine/Property A.							
Mine/Property B.							
Other mines/properties.							
Other geographic areas.							
Total							
Commodity B							
Geographic area A.							
Geographic area B.							
Mine/Property A.							
Mine/Property B.							
Other mines/properties.							
Other geographic areas.							
Total							

[1] Unless prices are defined by contractual arrangements, the registrant must use a commodity price that is no higher than the average spot price during the 24-month period prior to the end of the last fiscal year, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period and must disclose the price used. When prices are defined by contractual agreements, the registrant may use the price set by the contractual arrangement, provided that such price is reasonable, and the registrant discloses that it is using a contractual price and discloses the contractual price used.

We also are proposing several instructions to this summary disclosure requirement. The proposed instructions would:

- Define the term "by geographic area" to mean by individual country, regions of a country, state, groups of states, mining district, or other political units, to the extent material to and necessary for an investor's understanding of a registrant's mining operations;[305]
- explain that all disclosure of mineral resources must be exclusive of mineral reserves;[306]
- require that all disclosure of mineral resources and reserves must be only for the portion of the resources or

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[301] *See* proposed Item 1303(b)(3) of Regulation S–K.

[302] *See, e.g.*, SME Petition for Rulemaking at 1 ("Mining companies and investors around the world consider Mineral Resource estimates as material and fundamental information about a company and its projects.")

[303] *See, e.g.*, R. L. Robinson and B. W. Mackenzie, *Economic Comparison of Mineral Exploration and Acquisition Strategies to Obtain Ore Reserves* 281–282 (1987). ("Mining company objectives are . . . profit, growth, and survival . . . To survive, the company must successfully invest . . . in replacing the depleted ore reserves. An underlying thread among the profit, growth, and survival objectives is ore reserve replacement and growth.") *See also* H. R. Bullis, *Gold Deposits, Exploration Realities, and the Unsustainability of Very Large Gold Producers* 313–320 (2003).

[304] *See* proposed Table 3, which follows Instruction 5 to proposed Item 1303(b)(3) of Regulation S–K.

[305] *See* Instruction 1 to proposed Item 1303(b)(3) of Regulation S–K.

[306] *See* Instruction 2 to proposed Item 1303(b)(3) of Regulation S–K.

reserves attributable to the registrant's interest in the property;[307]

- require all mineral resource and reserve estimates to be based on prices that are no higher than the average spot price during the 24-month period prior to the end of the fiscal year covered by the report, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period, unless prices are defined by contractual arrangements;[308] and
- require that the mineral resource and reserve estimates called for in proposed Table 3 must be in terms of saleable product.[309]

We believe that these instructions would facilitate the clear and consistent presentation of information concerning a registrant's mineral reserves and resources for investors while providing flexibility to the registrant regarding the basis of the information presented. For example, the requirement to use any price below the 24-month trailing average provides registrants some flexibility on the price used in its reserve estimation. Also, the definition of "by geographic area" provides registrants flexibility on how to organize the information requested in Table 2.

For registrants with mining operations that are, in the aggregate, material but for which no individual property is material, this summary disclosure under proposed Item 1303 would be the only mining disclosure required in the registrant's filings. For registrants with individual properties that are material, we are proposing additional, more detailed, disclosure about such properties.[310] In addition, the proposed rules would exclude registrants with only one mining property from the summary disclosure requirement[311] because we do not see any benefit to requiring summary disclosure, in addition to individual disclosure, for a single material property.

We believe the proposed requirement for summary disclosure would be beneficial for both registrants and investors. We believe it would provide more efficient and effective disclosure and would better accommodate the diversity among registrants in terms of the number and relative size of their mining properties. Registrants would be required to disclose an appropriate level of information based on their particular facts and circumstances, specifically taking into account whether they own individually material properties. Under this approach, investors would be provided with information necessary to understand the registrant's mining operations even if it owns no individually material property. For those registrants with individually material properties, investors would obtain aggregate information about the registrant's mining operations as well as more detailed information about individually material properties.

Request for Comment

90. Should we require summary disclosure, as proposed, for all registrants with material mining operations? Why or why not? Should such summary disclosure require maps showing the locations of all mining properties, a presentation of the proposed information about the 20 properties with the largest asset values, and a summary of all mineral resources and reserves at the end of the most recently completed fiscal year, as proposed?

91. Should we permit registrants to treat multiple mines with interrelated mining operations as one mining property, as proposed? Should we instead require registrants to treat such mines as separate properties? Why or why not?

92. Should we exclude registrants with only one mining property from the summary disclosure requirements, as proposed? Why or why not? Alternatively, should we use a different threshold than the proposed "only one" threshold for excluding a registrant from the summary disclosure requirements? If so, what threshold should we use and why would this threshold be more appropriate?

93. Regarding the proposed summary disclosure requirement for the 20 largest properties, should we require other information, in addition to or in lieu of the proposed items? Why or why not? For example, should we require the registrant to disclose the asset value of each property included in its summary disclosure? Should we revise the proposed form and content of Table 2? If so, how should we revise the table's form or content?

94. Should the presentation of information about the mining properties with the largest asset values include the 20 largest properties, as proposed? Should this number be higher or lower? If so, what number is appropriate? Why? Should the summary disclosure include only those properties that represent 5% or more in asset value? Should we permit the summary disclosure to omit any property that represents 1% or less in asset value? Alternatively, should we require the specified information based on some criteria (*e.g.* revenues) other than asset value?

95. Should we require summary disclosure to include information on mineral resources and reserves, as proposed? Why or why not? If mineral resources and reserves are required in summary disclosure, should we require their disclosure by class of mineral reserves (probable and proven) and resources (inferred, indicated and measured), together with total mineral reserves and total measured and indicated mineral resources, as proposed? Should we require the summary disclosure by commodity and geographic area or property containing 10% or more of mineral reserves or sum of measured and indicated mineral resources, as proposed? Why or why not? In particular, is the proposed instruction to Table 3 regarding the scope of geographic area to be disclosed sufficiently clear, and if not, how should it be clarified? Should we require disclosure of mineral reserves and resources by some other attribute (*e.g.*, segments), in addition to or in lieu of commodity and geographic area? If so, which attributes should we use and why? Should we revise the proposed form and content of Table 3? If so, how should we revise the table's form or content?

96. Should we require the disclosure in Tables 2 and 3 to be made available in the eXtensible Business Reporting Language (XBRL) format? Why or why not?

97. If we require the disclosure in Tables 2 and 3 to be made available in XBRL, are the current requirements for the format and elements of the tables suitable for tagging? If not, how should they be revised? In particular, are the proposed instructions for Tables 2 and 3 sufficiently specific to make the data reported in the tables suitable for direct comparative analysis? If not, how should the instructions be revised to increase the usefulness of having the data made available in XBRL, including the comparability and quality of XBRL data?

98. If we require Tables 2 and 3 to be made available in XBRL, is there a particular existing taxonomy that should be used? Alternatively, what features should a suitable taxonomy have in this case?

2. Requirements for Individual Property Disclosure

We believe that summary property disclosure alone would not provide all relevant information about the properties and assets that generate a mining registrant's revenues. Therefore, we are proposing that a registrant provide more detailed information for each of its individual properties that is material to its business or financial condition. When determining whether an individual property is material to its business or financial condition, a registrant would have to apply the same standards and consider the same factors as required when determining whether its mining operations as a whole are material.[312]

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[307] *See* Instruction 3 to proposed Item 1303(b)(3) of Regulation S–K.

[308] *See* Instruction 4 to proposed Item 1303(b)(3) of Regulation S–K.

[309] *See* Instruction 5 to proposed Item 1303(b)(3) of Regulation S–K.

[310] *See* section II.G.2, *infra,* for a discussion of the requirements for individual property disclosure.

[311] *See* proposed Item 1303(a)(2) of Regulation S–K.

As proposed, for each material individual property, a registrant would have to provide a brief description of the property,[313] including:

- The property's location, accurate to within one mile, using an easily recognizable coordinate system, including appropriate maps, with proper engineering detail (such as scale, orientation, and titles), which must be legible on the page when printed;[314]
- existing infrastructure, including roads, railroads, airports, towns, ports, sources of water, electricity, and personnel;[315] and
- a brief description, including the name or number and size (acreage), of the titles, claims, concessions, mineral rights, leases or options under which the registrant and its subsidiaries have or will have the right to hold or operate the property, and how such rights are obtained at this location, indicating any conditions that the registrant must meet in order to obtain or retain the property. If held by leases or options or if the mineral rights otherwise have termination provisions, the registrant would have to provide the expiration dates of such leases, options or mineral rights and associated payments.[316]

For each material property, the proposed rules also would require a registrant to disclose a history of previous operations,[317] a description of the condition and status of the property,[318] and a description of any significant encumbrances to the property, including current and future permitting requirements and associated deadlines, permit conditions, regulatory violations and associated fines.[319]

In addition to providing a brief description of the present condition of the property, a registrant would have to disclose the work completed by the registrant on the property; the registrant's proposed program of exploration or development; the current stage of the property as exploration, development or production; the current state of exploration or development of the property; and the current production activities. Mines would have to be identified as either surface or underground, with a brief description of the mining method and processing operations. If the property is without known reserves and the proposed program is exploratory in nature or the registrant has started extraction without determining mineral reserves, the registrant would have to provide a statement to that effect.[320]

The proposed rules would also require a registrant to disclose, for each material property, the age, details as to modernization and physical condition of the equipment, facilities, infrastructure, and underground development.[321] In addition, the registrant would have to disclose the total cost for or book value of the property and its associated plant and equipment.[322] Regarding significant encumbrances to the property, a registrant would have to describe current and future permitting requirements and associated timelines, permit conditions, and violations and fines.[323]

The above proposed items of disclosure are substantially similar to items called for by Item 102 of Regulation S–K and Guide 7.[324] We continue to believe that these items are necessary to enable an investor to have an informed understanding of a registrant's material mining properties. In particular, property location is frequently used to assess socio-political and geographic risk, level of infrastructure, significance of adjacent properties and regional geology. In light of this, we believe that the required level of accuracy in the proposed rules is necessary. For example, the distance between a property and other (developing or producing) properties or in relation to major geologic structures can significantly impact the assessment of a property's value, especially in the exploration stage.[325]

To increase the quality and usefulness of the disclosure provided pursuant to the existing mining disclosure regime, the proposed rules would include several additional items of individual property disclosure. For example, unlike Guide 7, which does not address the issue, the proposed rules would apply to the disclosure obligations of a registrant holding a royalty interest or other similar economic interest in a property. Under the proposed rules, such a registrant would be required to describe all of the above information that an owner or operator of the property would have to provide, including, for example, the documents under which the owner or operator holds or operates the property, the mineral rights held by the owner or operator, conditions required to be met by the owner or operator, and the expiration dates of leases, options and mineral rights. The registrant would also have to describe briefly the agreement under which the registrant and its subsidiaries have or will have the right to a royalty or similar interest in the property, indicating any conditions that the registrant must meet in order to obtain or retain the royalty or similar interest, and indicating the expiration date.[326] We believe this information would help investors understand a royalty holder's property interest. We also believe that including individual property disclosure requirements in the rules for holders of royalty and other economic interests would help to elicit more complete and consistent disclosure in this regard to the benefit of those holders and their investors.

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[312] *See* proposed Item 1304(a) of Regulation S–K, which references proposed Item 1301(b). A registrant would have to apply those standards and other considerations to each individual property that it owns or in which it has, or it is probable that it will have, a direct or indirect economic interest; that it operates, or it is probable that it will operate, under a lease or other legal agreement that grants the registrant ownership or similar rights that authorize it, as principal, to sell or otherwise dispose of the mineral; or that it has, or it is probable that it will have, an associated royalty or similar right.

[313] *See* proposed Item 1304(b)(1).

[314] *See* proposed Item 1304(b)(1)(i). We believe the level of accuracy that would be required by the proposed rule is similar to the level of detail required by the CRIRSCO-based codes. *See, e.g.,* PERC Table 1 requirement on key plan, maps and diagrams, which calls for a location or index map and more detailed maps showing all important features described in the text, including all relevant cadastral and other infrastructure features . . . All maps, plans and sections noted in this checklist, should be legible, and include a legend, coordinates, coordinate system, scale bar and north arrow." Similarly, SAMREC Table 1 also calls for a "detailed topo-cadastral map."

[315] *See* proposed Item 1304(b)(1)(ii).

[316] *See* proposed Item 1304(b)(1)(iii) of Regulation S–K.

[317] *See* proposed Item 1304(b)(2) of Regulation S–K.

[318] *See* proposed Item 1304(b)(3) of Regulation S–K.

[319] *See* proposed Item 1304(b)(4) of Regulation S–K.

[320] *See* proposed Item 1304(b)(3)(i) of Regulation S–K.

[321] *See* proposed Item 1304(b)(3)(ii) of Regulation S–K.

[322] *See* proposed Item 1304(b)(3)(iii) of Regulation S–K. An instruction to this Item would reiterate that a registrant must identify an individual property with no mineral reserves as an exploration stage property, even if it has other properties in development or production; and a registrant that does not have reserves on any of its properties cannot characterize itself as a development or production stage company, even if it has mineral resources or exploration results, or even if it is engaged in extraction without first disclosing mineral reserves.

[323] *See* proposed Item 1304(b)(4) of Regulation S–K.

[324] For example, paragraph (b) of Guide 7 calls for registrants to disclose the location and means of access to the property, a description of the title, claim, lease or option under which the registrant operates the property with appropriate maps to portray the location, a history of previous operations, a description of the present condition of the property, the work completed by the registrant on the property, the registrant's proposed program of exploration and development, the current state of exploration or development of the property, and a description of the rock formations and mineralization of existing or potential economic significance on the property, including the identity of the principal metallic or other constituents insofar as known.

[325] Location of a mineral prospect relative to known deposits or geologic structures is an attribute used to determine the mineral potential (*i.e.,* the probability that mineral deposits of the type sought can be found at the prospect). *See, e.g.,* E. J. M. Carranza, "Geocomputation of mineral exploration targets," *Computers & Geosciences,* 1907–1916 (2011); and A. Porwal and E. J. M. Carranza, "Introduction to the Special Issue: GIS-based mineral potential modelling and geological data analyses for mineral exploration," *Ore Geology Reviews* 477–483 (2015).

In addition, we are proposing to require several of the disclosure items in tabular form because we believe this would standardize the disclosure, facilitate a registrant's compliance with the disclosure requirements, and enhance an investor's understanding of the registrant's material mining properties.[327] Specifically, we are proposing that a registrant, for each material property, would provide the tabular information required by Tables 4, 5, and 6 as set forth below. While we are proposing general guidelines for the tabular presentations, we would permit registrants to modify the tables for ease of presentation, to add information, or to combine two or more required tables throughout their disclosure.[328]

As proposed, Table 4 would require a summary of the exploration activity for the most recently completed fiscal year, which, for each sampling method used, discloses the number of samples, the total size or length of the samples, and the total number of assays.[329] A registrant would have to provide this information in tabular form using the format of the following table, designated as Table 4:

TABLE 4—[INDIVIDUAL PROPERTY NAME]—SUMMARY EXPLORATION ACTIVITY FOR THE FISCAL YEAR ENDING [DATE]

Sampling methods	Number of samples [1]	Total size or length [2]	Total number of assays
Method 1			
Method 2			

[1] This refers to number of drill holes, trenches, geophysical survey lines, etc.

[2] This refers to the total length of drill holes, trenches, and geophysical survey lines or total amount of material in bulk sampling.

As proposed, Table 5 would require a registrant to provide a summary of material exploration results for the most recently completed fiscal year, which, for each material property, identifies the hole that generated the exploration results, and describes the length, lithology[330] and key geologic properties (*e.g.*, grades, contaminants, and energy content) of the exploration results. A registrant would have to provide this information in tabular form using the format of the following table, designated as Table 5, accompanied by a brief discussion of the exploration results' context and relevance:[331]

TABLE 5—[INDIVIDUAL PROPERTY NAME]—SUMMARY EXPLORATION RESULTS FOR THE FISCAL YEAR ENDING [DATE][1]

Hole ID	From	To	Length	Lithology	Geologic Property 1	Geologic Property 2	. . .	Geologic Property n

[1] If only results from selected holes and intersections are included, they should be accompanied by a discussion of the context and justification for excluding other results.

Neither Guide 7 nor Item 102 calls for disclosure of exploration results, although Guide 7 does call for the disclosure of the registrant's exploration program.[332] As discussed above, we are proposing to require disclosure of a registrant's material exploration results because we believe such disclosure would provide investors with a more comprehensive view of a registrant's mining operations and help them make more informed investment decisions.[333]

Table 6, as proposed, would require a registrant to disclose, if mineral resources or reserves have been determined, a summary of all mineral resources and reserves, which, for each material property, provides the estimated tonnages, grades (or quality, where appropriate), cut-off grades and metallurgical recovery, by class of mineral resource and reserve, occurring in-situ, as plant/mill feed, and as saleable product.[334] A registrant would have to provide this information in tabular form using the format of the following table, designated as Table 6:

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[326] *See* proposed Item 1304(b)(1)(iv) of Regulation S–K.

[327] *See, e.g.*, proposed Items 1304(b)(5) through (7) of Regulation S–K.

[328] *See* Instruction 2 to proposed Items 1304(b)(5) through (7) of Regulation S–K.

[329] *See* proposed Table 4 and proposed Item 1304(b)(5) of Regulation S–K.

[330] Lithology, as used in this context, refers to the description of a particular rock unit. Generally, it refers to the characteristics of a rock formation.

[331] *See* proposed Table 5 and proposed Item 1304(b)(6) of Regulation S–K.

[332] *See* paragraph (b)(4)(i) of Guide 7.

[333] *See* section II.D, *supra*, for a more detailed discussion of our reasons for requiring disclosure of material exploration results.

[334] *See* proposed Table 6 and proposed Item 1304(b)(7) of Regulation S–K.

TABLE 6—[INDIVIDUAL PROPERTY NAME]— SUMMARY OF [COMMODITY/COMMODITIES] MINERAL RESERVES AND RESOURCES AT THE END OF THE FISCAL YEAR ENDED [DATE] BASED ON [PRICE][1]

	In-situ		Plant/mill feed		Saleable product	Cut-off grades	Metallurgical recovery
	Amount	Grades/ Qualities	Amount	Grades/ Qualities			
Proven mineral reserves							
Probable mineral reserves							
Total mineral reserves							
Measured mineral resources							
Indicated mineral resources							
Measured + Indicated mineral resources							
Inferred mineral resources							

[1] Unless prices are defined by contractual arrangements, the registrant must use a commodity price that is no higher than the average spot price during the 24-month period prior to the end of the last fiscal year, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period and must disclose the price used. When prices are defined by contractual agreements, the registrant may use the price set by the contractual arrangement, provided that such price is reasonable, and the registrant discloses that it is using a contractual price and discloses the contractual price used.

We also are proposing a few instructions to the provisions requiring a registrant to disclose its exploration activity, material exploration results, and mineral resource and reserve estimates for each material property. One instruction would advise a registrant not to include an extensive description of regional geology, but, rather, to include geological information that is brief and relevant to property disclosure.[335] Another proposed instruction would explain that all disclosure of mineral resources must be exclusive of mineral reserves.[336] A third proposed instruction would state that a registrant with only a royalty interest should provide only the portion of the resources or reserves that are subject to the royalty or similar agreement.[337] We believe that these proposed instructions would facilitate a registrant's compliance with the individual property disclosure requirements while providing investors with focused and consistent disclosure.

The proposed rules would further require a registrant to provide, in proposed Tables 7 and 8, a comparison of its mineral resources and reserves as of the end of the last fiscal year against the mineral resources and reserves as of the end of the preceding fiscal year, with an explanation of any change between the two.[338] The comparison would have to disclose information concerning:

- The mineral resources or reserves at the end of the last two fiscal years;
- the net difference between the mineral resources or reserves at the end of the last completed fiscal year and the preceding fiscal year, as a percentage of the resources or reserves at the end of the fiscal year preceding the last completed one;
- an explanation of the causes of any discrepancy in mineral resources including depletion or production, changes in commodity prices, additional resources discovered through exploration, and changes due to the methods employed; and
- an explanation of the causes of any discrepancy in mineral reserves including depletion or production, changes in the resource model, changes in commodity prices and operating costs, changes due to the methods employed, and changes due to acquisition or disposal of properties.[339]

A registrant would have to provide this comparison in tabular form in the following format:

TABLE 7—MINERAL RESOURCE RECONCILIATION

[Only the sum of Measured and Indicated Resources should be used in reconciliation disclosure]

	Resource at the end of fiscal year ending mm/dd/yy[1]	Resource at the end of fiscal year ending mm/dd/yy[1]	Net Diff. (%)	Causes of discrepancies in resources							Comments
				Depletion or production	Price	Cost	Exploration	Methodology	Acquisition/ disposal	Others	
Ore type 1.											
Ore type 2.											

[1] Use these two columns to disclose resources at the end of each of the last two fiscal years.

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[335] *See* Instruction 1 to proposed Items 1304(b)(5) through (7).

[336] *See* Instruction 3 to proposed Items 1304(b)(5) through (7).

[337] *See* Instruction 4 to proposed Items 1304(b)(5) through (7).

[338] *See* proposed Tables 7 and 8 and proposed Item 1304(b)(8) of Regulation S–K.

[339] *See* proposed Item 1304(b)(8)(i)–(iv) of Regulation S–K.

TABLE 8—MINERAL RESERVE RECONCILIATION.

	Reserves at the end of fiscal year ending mm/dd/yy[1]	Reserves at the end of fiscal year ending mm/dd/yy[1]	Net Diff. (%)	Causes of discrepancies in reserves							Comments
				Depletion or production	Resource model	Price	Cost	Methodology	Acquisition/disposal	Others	
Ore type 1.											
Ore type 2.											

[1] Use these two columns to disclose reserves at the end of each of the last two fiscal years.

We believe that this comparative disclosure requirement would help investors understand the reasons for the year to year changes in a registrant's mineral resources and reserves, which should help investors analyze and evaluate a registrant's future prospects.

While Guide 7 calls for annual disclosure of mineral reserves, it does not call for registrants to compare their current mineral reserve disclosure with previously provided disclosure. Thus, this proposed comparative disclosure requirement could increase reporting costs for registrants. We believe, however, that much of the disclosure that would be required under the proposed comparative disclosure requirement is often provided by registrants pursuant to current disclosure practices. We believe that in most cases this disclosure is sufficiently important to an investor's understanding of the registrant's material properties that it would be appropriate to have a separate, stand-alone requirement set forth in our rules.

If the registrant has not previously disclosed mineral reserve or resource estimates in a filing with the Commission or is disclosing material changes to its previously disclosed mineral reserve or resource estimates, we are proposing that it provide a brief discussion of the material assumptions and criteria in the disclosure. The material assumptions and criteria would depend on the specific facts and circumstances surrounding the particular property and the mineral resource and reserve estimates. The disclosure of these assumptions and criteria, however, would need to include all of the material information necessary for investors to understand the disclosed mineral resources or reserves. In addition, the registrant would have to cite to corresponding sections of the technical report summary, which would be filed as an exhibit pursuant to proposed Item 1302(b).[340]

Similarly, if the registrant has not previously disclosed material exploration results in a filing with the Commission, or is disclosing material changes to its previously disclosed exploration results, we are proposing that it must provide sufficient information to allow for an accurate understanding of the significance of the exploration results. This must include information such as exploration context, type and method of sampling, sampling intervals and methods, relevant sample locations, distribution, dimensions, and relative location of all relevant assay and physical data, data aggregation methods, land tenure status, and any additional material information that may be necessary to make the required disclosure concerning the registrant's exploration results not misleading. In addition, the registrant would have to cite to corresponding sections of the summary technical report, which would be filed as an exhibit pursuant to proposed Item 1302(b).[341]

Finally, we are proposing some individual property disclosure instructions applicable to registrants that have not previously disclosed mineral resource or reserve estimates or material exploration results or that are disclosing a material change in previously disclosed mineral resource or reserve estimates or material exploration results. Most of these proposed instructions are designed to assist registrants in determining whether there has been a material change in estimates of mineral resources, mineral reserves, or material exploration results. For example, one key proposed instruction would explain that whether a change in exploration results, mineral resources, or mineral reserves, is material must be based on all facts and circumstances, both quantitative and qualitative.[342] Another proposed instruction would provide that a change in exploration results that significantly alters the potential of the exploration target is considered material.[343]

Other proposed instructions would establish quantitative thresholds for presumed materiality of a change in estimates of mineral resources or reserves. For example, one proposed instruction would state that an annual change in total resources or reserves of 10% or more, excluding production as reported in proposed Tables 7 and 8, is presumed to be material, and thus would need to be disclosed.[344] Another proposed instruction would establish that a cumulative change in total resources or reserves of 30% or more in absolute terms, excluding production as reported in Tables 7 and 8, from the current filed technical report summary is presumed to be material.[345] A third proposed instruction would require that, when applying these quantitative thresholds for presumed materiality, the registrant should consider the change in total resources or reserves on the basis of total tonnage or volume of saleable product.[346]

Another proposed instruction would require a registrant to consider carefully whether the filed technical report summary is current with respect to all material assumptions and information, including assumptions relating to or underlying all modifying factors and scientific and technical information (*e.g.,* sampling data, estimation assumptions and methods). To the extent that the registrant is not filing a technical report summary but instead is basing the required disclosure upon a previously filed report, that report would also have to be current in these respects. If the previously filed report is not current in these respects, the registrant would have to file a revised or new summary technical report from a qualified person, in compliance with Item 601(b)(96) of Regulation S–K, which supports the registrant's mining property disclosures.[347]

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[340] *See* proposed Item 1304(b)(9) of Regulation S–K.

[341] *See* proposed Item 1304(b)(10) of Regulation S–K.

[342] *See* Instruction 1 to proposed Items 1304(b)(9) and (10).

[343] *See* Instruction 2 to proposed Items 1304(b)(9) and (10).

[344] *See* Instruction 3 to proposed Items 1304(b)(9) and (10).

[345] *See* Instruction 4 to proposed Items 1304(b)(9) and (10).

[346] *See* Instruction 5 to proposed Items 1304(b)(9) and (10).

[347] *See* Instruction 6 to proposed Items 1304(b)(9) and (10).

Finally, a proposed instruction would explain that a report containing estimates of the quantity, grade, or metal or mineral content of a deposit or exploration results that a registrant has not verified as a current mineral resource, mineral reserve, or exploration results, and which was prepared before the registrant acquired, or entered into an agreement to acquire, an interest in the property that contains the deposit, would not be considered current and could not be filed in support of disclosure.[348]

We believe these instructions would help a registrant determine when it must file a technical report summary as an exhibit to the filing and provide the appropriate accompanying disclosure in the filing about the resource or reserve estimates and material exploration results. At the same time, the proposed instructions would help to ensure that investors are provided with current information about their mineral resources and reserves and material exploration results.

Request for Comment

99. Should we require disclosure on individually material properties, as proposed? Why or why not? Should such disclosure require a description of the property, a history of previous operations, a description of the condition and status of the property, a description of any significant encumbrances to the property, a summary of the exploration activity for the most recently completed fiscal year, a summary of material exploration results for the most recently completed fiscal year, and a summary of all mineral resources and reserves, if mineral resources or reserves have been determined, as proposed?

100. Should we require that a registrant provide the property's location, including in maps, accurate within one mile? Why or why not? If not, should we use a standard for degree of accuracy similar to that used in the CRIRSCO-based codes, such as PERC or SAMREC? Why or why not? If not, what level of accuracy should we require?

101. Should we require that a registrant provide in tabular format each of the summaries required for its exploration activity, material explorations results, and mineral resources and reserves, as proposed? Why or why not? Should we require all of the information specified in Tables 4–8 to be in tabular form? Why or why not? Should we revise the proposed form and content of these tables? If so, how should we revise the tables' form or content?

102. Should we permit registrants to disclose estimates of mineral resources and reserves based on different price criteria, which may reasonably be achieved, in lieu of, or in addition to, the price which is no higher than the 24-month trailing average? Why or why not? What factors should we use to determine what may reasonably be achieved? Should we require all registrants to use the 24-month average spot price (or average over a different period) as the commodity price instead of as a ceiling? Why or why not?

103. Should we require the registrant to provide a comparison of the mineral resources and reserves as of the end of the last fiscal year against the mineral resources and reserves as of the end of the preceding fiscal year, with an explanation of any material change between the two, as proposed? Why or why not? Are there items of information that we should include in the comparison instead of or in addition to the proposed items of information? Are there any proposed items of information that we should exclude from the comparison?

104. If the registrant has not previously disclosed material exploration results, mineral reserve or resource estimates in a filing with the Commission or is disclosing material changes to its previously disclosed exploration results, mineral reserve or mineral resource estimates, should we require it to provide a brief discussion of the material assumptions and criteria in the disclosure and cite to any sections of the technical report summary, as proposed? Should we require registrants to file updated summary technical reports to support disclosure of material exploration results, mineral resources or mineral reserves when the registrant is relying on a previously filed technical report summary that is no longer current with respect to all material scientific and technical information, as proposed? Why or why not?

105. Regarding the proposed requirement to disclose a material change in mineral resources or reserves, should we adopt an instruction that an annual change in total resources or reserves of 10% or more, or a cumulative change in total resources or reserves of 30% or more in absolute terms, excluding production as reported in Tables 7 and 8, is presumed to be material, as proposed? Why or why not? If not, should we remove the materiality presumptions altogether or use different quantitative thresholds from those proposed? If the latter, what alternative thresholds or measure(s) should replace the proposed presumptions of materiality?

106. Should we require the disclosure in Tables 4 through 8 to be made available in the XBRL format? Why or why not?

107. If we require the disclosure in Tables 4 through 8 to be made available in XBRL, are the current requirements regarding for the format and elements of the tables suitable for tagging? If not, how should they be revised? In particular, are the proposed instructions for Tables 4 through 8 sufficiently specific to make the data reported in the tables suitable for direct comparative analysis? If not, how should the instructions be revised to increase the usefulness of having the data made available in XBRL, including the comparability and quality of XBRL data?

108. If we require Tables 4 through 8 to be made available in XBRL, is there a particular existing taxonomy that should be used? Alternatively, what features should a suitable taxonomy have in this case?

3. Requirements for Technical Report Summaries

As previously discussed, the proposed rules would require a registrant to file, as an exhibit, a technical report summary to support the disclosure of mineral resources, mineral reserves, or material exploration results for each material property. We believe that requiring disclosure of the important scientific and technical information that forms the basis for disclosure of exploration results, mineral resources and mineral reserves in SEC filings would benefit investors. In this regard, a registrant's estimates of its mineral reserves, resources and exploration results are entirely dependent on the scientific and technical information considered by the qualified person. There is always a level of uncertainty associated with estimates of mineral deposits under the ground. As such, the report would provide investors with important contextual information with which to evaluate the reliability of the registrant's disclosure.

The proposed rules would require a qualified person to identify and summarize the scientific and technical information and conclusions reached concerning material mineral exploration results, initial assessments used to support disclosure of mineral resources, and preliminary or final feasibility studies used to support disclosure of mineral reserves, for each material property, in the technical report summary.[349] The qualified person would also have to sign and date the technical report summary.[350] This requirement should help to ensure the reliability of the technical report summary.

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[348] *See* Instruction 7 to proposed Items 1304(b)(9) and (10).

The proposed requirements for the contents of the technical report summary are intended to elicit the scientific and technical information necessary to support the determination and disclosure of mineral resources, mineral reserves and material exploration results. These proposed requirements, as discussed below, are similar in most respects to the items of information required for the summary report under the Canadian mining disclosure provisions in NI 43–101.[351] They are also similar to the contents suggested in the mining engineering literature.[352] These similarities support our view that the proposed sections of the technical report summary would provide relevant and useful information to facilitate an investor's understanding of a registrant's mineral resources, mineral reserves and material exploration results.

As proposed, the technical report summary must not include large amounts of technical or other project data, either in the report or as appendices to the report.[353] This requirement would prohibit the current practice, by some registrants, of providing large amounts of drill hole data[354] and other technical information as appendices to technical report summaries. In addition, the qualified person must draft the summary to conform, to the extent practicable, with plain English principles under the Securities Act and Exchange Act.[355] These proposed requirements should help improve the readability of the technical report summary for the benefit of those investors who do not have a technical engineering background. They also are consistent with similar Canadian mining disclosure standards.[356]

We are proposing that the technical report summary consist of some or all of the following 26 sections,[357] depending upon the specific scope of the summary:

- An executive summary that briefly summarizes the most significant information in the technical report summary, including property description and ownership, geology and mineralization, the status of exploration, development and operations, mineral resource and mineral reserve estimates, summary capital and operating cost estimates, permitting requirements, and the qualified person's conclusions and recommendations;[358]
- an introduction, which, among other matters, must identify the registrant for whom the technical report summary was prepared, disclose the terms of reference and purpose for which the technical report summary was prepared, and briefly describe any personal inspection of the property by each qualified person[359] or, if none was made, the reason why a personal inspection was not completed;[360]
- a description of the property, including the location of the property, accurate to within one mile, using an easily recognizable coordinate system, together with appropriate maps, with proper engineering detail (such as scale, orientation, and titles) to portray the location of the property;[361]
- a description of the property's accessibility, climate, local resources, infrastructure and physiography;[362]
- a history of the property, which must include a description of previous operations, together with the names of previous operators if known, and the type, amount, quantity, and general results of exploration and development work undertaken by any previous owners or operators;[363]
- a brief description of the regional, local, and property geology, the significant mineralized zones encountered on the property, and each mineral deposit type that is the subject of investigation or exploration, together with the geological model or concepts being applied in the investigation or forming the basis of exploration program;[364]
- a description of the property's hydrogeology;[365]
- a description of geotechnical data, testing and analysis;[366]
- a description of the nature and extent of all relevant exploration work

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[349] *See* proposed Item 601(b)(96)(i) of Regulation S–K.

[350] *See* proposed Item 601(b)(96)(ii) of Regulation S–K.

[351] *See* Form 43–101F1, which prescribes 27 sections for the technical report summary required for each material property pursuant to Part 4 of NI 43–101, and which is available at: *http://web.cim.org/standards/documents/Block484_Doc111.pdf.*

[352] *See, e.g.,* W. Hustrulid, M. Kuchta and R. Martin, 1 Open Pit Mine Planning & Design 14–16 (3rd ed. 2013); Richard West, "Preliminary, Prefeasibility and Feasibility Studies," Australian Mineral Economics—A Survey of Important Issues (Philip Maxwell and Pietro Guj, eds, 2006).

[353] *See* proposed Item 601(b)(96)(iii) of Regulation S–K.

[354] Drill hole data, as used in this context, refers to information obtained from drilling that includes results of laboratory analysis of samples obtained from drilling and rock types.

[355] *See* Securities Act Rule 421 (17 CFR 230.421) and Securities Exchange Act Rule 13a–20 (17 CFR 240.13a–20).

[356] *See* Instruction 3 to Form 43–101F1, which states: "The qualified person preparing the technical report should keep in mind that the intended audience is the investing public and their advisors who, in most cases, will not be mining experts. Therefore, to the extent possible, technical reports should be simplified and understandable to a reasonable investor. However, the technical report should include sufficient context and cautionary language to allow a reasonable investor to understand the nature, importance, and limitations of the data, interpretations, and conclusions summarized in the technical report."

[357] *See* proposed Item 601(b)(96)(iv)(B), which is set forth in its entirety in section VIII, *infra,* for a complete list and description of the contents of the technical report summary The description of these sections that follows is not intended to be comprehensive.

[358] *See* proposed Item 601(b)(96)(iv)(B)(1) of Regulation S–K.

[359] As indicated in note 74, *supra,* a registrant may have more than one qualified person prepare a technical report summary for a mining property or project.

[360] *See* proposed Item 601(b)(96)(iv)(B)(2) of Regulation S–K.

[361] The property description must include the area of the property, the name or number of each title, claim, mineral right, lease or option under which the registrant and its subsidiaries have or will have the right to hold or operate the property, the mineral rights, and how such rights have been obtained at this location, indicating any conditions that the registrant must meet in order to obtain or retain the property, any significant encumbrances to the property, including current and future permitting requirements and associated timelines, permit conditions, and violations and fines, and any other significant factors and risks that may affect access, title, or the right or ability to perform work on the property. *See* proposed Item 601(b)(96)(iv)(B)(3) of Regulation S–K.

[362] Physiography refers to physical geography. This section requires a description of the property's topography, elevation, and vegetation, means of access to the property, the climate and length of the operating season, as applicable, and the availability of and required infrastructure, including sources of water, electricity, personnel, and supplies. *See* proposed Item 601(b)(96)(iv)(B)(4) of Regulation S–K.

[363] *See* proposed Item 601(b)(96)(iv)(B)(5) of Regulation S–K.

[364] The qualified person must include at least one stratigraphic column and one cross-section of the local geology to meet these requirements. "Stratigraphic column" refers to the vertical order, by age, of rocks units (strata). Typically, the oldest rocks are located at the bottom and youngest at the top of the column. *See* proposed Item 601(b)(96)(iv)(B)(6) of Regulation S–K.

[365] Hydrogeology is the branch of geology concerned with the study of the occurrence, distribution, movement and geological interaction of water. This section requires, among other matters, a description of the nature and quality of the sampling methods used to acquire data on surface and groundwater parameters, and the type and appropriateness of laboratory techniques used to test for groundwater flow parameters such as permeability. *See* proposed Item 601(b)(96)(iv)(B)(7) of Regulation S–K.

[366] This section requires a description of the nature and quality of the sampling methods used to acquire geotechnical data, the type and appropriateness of laboratory techniques used to test for soil and rock strength parameters, and the results of laboratory testing, including the qualified person's interpretation and material assumptions made. *See* proposed Item 601(b)(96)(iv)(B)(8) of Regulation S–K.

conducted by or on behalf of the registrant;[367]

- a description of sample preparation methods and quality control measures employed prior to sending samples to an analytical or testing laboratory, sample splitting and reduction methods, and the security measures taken to ensure the validity and integrity of samples;[368]
- a description of the steps taken by the qualified person to verify the data being reported on or which is the basis of the technical report summary;[369]
- a description of the nature and extent of the mineral processing or metallurgical testing and analytical procedures;[370]
- if mineral resource estimates are being reported, a description of the key assumptions, parameters, and methods used to estimate the mineral resources, in sufficient detail for a reasonably informed person to understand the basis for and how the qualified person estimated the mineral resources;[371]
- if mineral reserves are being reported, a description of the key assumptions, parameters, and methods used to estimate the mineral reserves, in sufficient detail for a reasonably informed person to understand the basis for converting, and how the qualified person converted, indicated and measured mineral resources into the mineral reserves;[372]
- a description of the current or proposed mining methods and the reasons for selecting these methods as the most suitable for the mineral reserves under consideration;[373]
- a description of the current or proposed processing and recovery methods and the reasons for selecting those methods as the most suitable for extracting the valuable products from the mineralization under consideration;[374]
- a description of the required infrastructure for the project, including roads, rail, port facilities, dams, dumps and leach pads, tailings disposal, power, water and pipelines, as applicable;[375]
- a description of the market for the products of the mine, including justification for demand or sales over the life of the mine (or length of cash flow projections);[376]
- a description of the environmental, permitting, and social or community factors related to the project;[377]
- an estimate of capital and operating costs, with the major components set out in tabular form;[378]
- an economic analysis, which, among other matters, describes the key assumptions, parameters, and methods used to demonstrate economic viability, and includes the results of the economic analysis presented as annual cash flow forecasts based on an annual production schedule for the life of the project, and measures of economic viability such as net present value, internal rate of return, and payback period of capital;[379]
- a discussion of relevant information concerning an adjacent property provided that certain conditions have been met;[380]

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[367] This description must include drilling and all other exploration work, such as geophysical and geochemical surveys and analysis. *See* proposed Item 601(b)(96)(iv)(B)(9) of Regulation S–K.

[368] This description must include sample preparation, assaying and analytical procedures used, the name and location of the analytical or testing laboratories, the relationship of the laboratory to the registrant, and whether the laboratories are certified by any standards association and the particulars of such certification. This description must also include the nature, extent, and results of quality control procedures and quality assurance actions taken or recommended to provide adequate confidence in the data collection and estimation process. This section must further include the qualified person's opinion on the adequacy of sample preparation, security, and analytical procedures. If the analytical procedures used in the analysis are not part of conventional industry practice, the qualified person must so state and provide a justification for why he or she believes the procedure is appropriate in this instance. *See* proposed Item 601(b)(96)(iv)(B)(10) of Regulation S–K.

[369] This section must include, among other matters, the qualified person's opinion on the adequacy of the data for the purposes used in the technical report summary. *See* proposed Item 601(b)(96)(iv)(B)(11) of Regulation S–K.

[370] This description must include the degree to which the test samples are representative of the various types and styles of mineralization and the mineral deposit as a whole, and the relevant results, including the basis for any assumptions or predictions about recovery estimates. The description must also identify the analytical or testing laboratories, the relationship of the laboratory to the registrant, whether the laboratories are certified by any standards association and the particulars of such certification. In addition, this section requires the qualified person's opinion on the adequacy of the data for the purposes used in the technical report summary. If the analytical procedures used in the analysis are not part of conventional industry practice, the qualified person must so state and provide a justification for why he or she believes the procedure is appropriate in this instance. *See* proposed Item 601(b)(96)(iv)(B)(12) of Regulation S–K.

[371] This section must provide estimates of mineral resources for all commodities, including estimates of quantities, grade or quality, cut-off grades, and metallurgical or processing recoveries. It must also provide the qualified person's opinion on whether all issues relating to all relevant modifying factors can be resolved with further work. *See* proposed Item 601(b)(96)(iv)(B)(13) of Regulation S–K.

[372] This section must provide estimates of mineral reserves for all commodities, including estimates of quantities, grade or quality, cut-off grades, and metallurgical or processing recoveries. It must also provide the qualified person's opinion on how the mineral reserve estimates could be materially affected by risk factors associated with or changes to any aspect of the modifying factors. If a pre-feasibility study is used to support mineral reserve disclosure, the qualified person must provide a justification for using a pre-feasibility study instead of a feasibility study. *See* proposed Item 601(b)(96)(iv)(B)(14) of Regulation S–K.

[373] This description must include, among other matters, geotechnical and hydrological models, and other parameters relevant to mine designs and plans. As used in this context, a "hydrological model" refers to a conceptual model of surface and ground water at the mine site, which impacts the selection and design of mining methods. *See* proposed Item 601(b)(96)(iv)(B)(15) of Regulation S–K.

[374] This section must include a description or flow sheet of any current or proposed process plant, plant throughput and design, equipment characteristics and specifications, and current or projected requirements for energy, water, process materials, and personnel. If the processing method, plant design or other parameters have never been used to successfully extract the valuable product from such mineralization, the qualified person must so state and provide a justification for why he or she believes the approach will be successful in this instance. In addition, as proposed, if the processing method has never been used to successfully extract product from such mineralization and it is still under development, no mineral resources or reserves can be disclosed on the basis of that method. *See* proposed Item 601(b)(96) (iv)(B)(16) of Regulation S–K.

[375] *See* proposed Item 601(b)(96)(iv)(B)(17) of Regulation S–K.

[376] This section must include information concerning markets for the property's production, including the nature and material terms of any agency relationships and the results of any relevant market studies; commodity price projections, product valuation, market entry strategies, and product specification requirements; and descriptions of all material contracts required for the registrant to develop the property, including mining, concentrating, smelting, refining, transportation, handling, hedging arrangements, and forward sales contracts. *See* proposed Item 601(b)(96)(iv)(B)(18) of Regulation S–K.

[377] This description must include, among other matters, the results of environmental studies, such as environmental baseline studies or impact assessments; requirements and plans for waste and tailings disposal; project permitting requirements; plans for social or community engagement and the status of any negotiations or agreements with local communities; and mine closure plans, including remediation and reclamation plans, and the associated costs. This section must also include the qualified person's opinion on the adequacy of current plans to address any issues related to environmental, permitting and social or community factors. *See* proposed Item 601(b)(96)(iv)(B)(19) of Regulation S–K.

[378] This section requires the qualified person to explain and justify the basis for the cost estimates, including any contingency budget estimates, and state the accuracy level of the capital and operating cost estimates. The accuracy of capital and operating cost estimates must comply with proposed Item 1302 of Regulation S–K. *See* proposed Item 601(b)(96)(iv)(B)(20) of Regulation S–K.

[379] *See* proposed Item 601(b)(96)(iv)(B)(21) of Regulation S–K.

[380] As proposed, the qualified person may provide a discussion of relevant information concerning an adjacent property only if such information has been publicly disclosed by the owner or operator of the adjacent property, the source of the information is identified, and the qualified person states that he or she has been unable to verify the information and that the information is not necessarily indicative of the mineralization on the property that is the subject of the technical report. In addition, the technical report must clearly distinguish between the information from the adjacent property and the information from the property that is the subject of the technical report summary. *See* proposed Item 601(b)(96)(iv)(B)(22) of Regulation S–K.

- a discussion of any other relevant data or information necessary to provide a complete and balanced presentation of the value of the property to the registrant; [381]
- a summary of the qualified person's interpretations and conclusions based on the data and analysis in the technical report summary; [382]
- a description of the qualified person's recommendations for additional work with associated costs, if applicable; [383] and
- a list of all references cited in the technical report summary in sufficient detail so that a reader can locate each reference.[384]

A technical report summary that reports the results of a preliminary or final feasibility study would have to include all of the information specified in the above proposed sections. A technical report summary that reports the results of an initial assessment or that reports material exploration results could omit information required by certain of the proposed technical report summary sections.[385]

As noted above, these proposed sections are similar in most respects to the items of information required for the summary report under Canada's NI 43–101.[386] There are, however, some notable differences. First, the proposed rules do not permit a qualified person to include a disclaimer of responsibility if he or she relies on a report, opinion, or statement of another expert in preparing the technical report summary.[387] We believe such a disclaimer would be inappropriate since the qualified person, as the professional expert, has prepared and is responsible for the information contained in the technical report summary.[388] We recognize that in preparing complex reports of this nature, the responsible person(s) would, when necessary, rely on information and input from others. Nonetheless, we believe the qualified person, as the consenting expert, must take responsibility for any report, opinion or statement provided by another person upon which the qualified person has relied. This would help to ensure that the qualified person has taken the necessary steps to verify any information provided by other experts that are included in the report. We believe that this standard is both appropriate and reasonable, as evidenced by its similarity to standards found in the code of ethics of engineering professionals.[389]

In addition, we are proposing to include sections about hydrogeology and geotechnical data, including testing and analysis, which are not included in NI 43–101. We believe that these two items are sufficiently important that investors would benefit from having them as separate requirements, rather than subsumed under other requirements, because they can directly impact the economic viability of a mining project. Hydrogeology and geotechnical data are the basis for determining several design parameters that directly impact the safety of the designed mine. Moreover, these design parameters can affect the operating and capital costs and can, therefore, directly impact the economics of the mine (*i.e.*, the determination of reserves). Detailed hydrogeology and geotechnical data would therefore provide insight into the adequacy and appropriateness of the mine's design parameters, which would allow investors and their advisors to evaluate fully the disclosed economic viability of the mine.

Request for Comment

109. Should we require the qualified person to include in a technical report summary the 26 items, as proposed? Are there any items of information that we should include instead of or in addition to the proposed 26 sections of the technical report summary? Are there any items of information that we should exclude from the proposed technical report summary?

110. As previously noted, the qualified person would have to apply and evaluate relevant modifying factors to assess prospects of economic extraction or to convert measured and indicated mineral resources to proven or probable mineral reserves. These would include a variety of factors such as economic, legal, and environmental as discussed more fully above. For example, to apply and evaluate legal factors the qualified person must examine the regulatory regime of the host jurisdiction to establish that the registrant can comply (fully and economically) with all laws and regulations (*e.g.*, mining; environmental, including regulations governing water use and impacts, waste management, and biodiversity impacts; reclamation; and permitting regulations) that are relevant to operating a mineral project using existing technology. Should we expand proposed Item 601(b)(96)(iv)(B)(19)(vi) to provide additional specific examples, in addition to those set forth in Items 601(b)(96)(iv)(B)(19)(i)–(iv), of "issues related to environmental, permitting and social or community factors" that the qualified person must include in the technical report summary? For example, should we expressly require that the qualified person include a discussion of other sustainability issues such as how he or she considered issues related to managing greenhouse gas emissions or workforce health, safety and well-being? Are there other items for which it would be appropriate to require the qualified person to include a discussion in the technical report summary? If so, please provide examples and explain why.

111. Should we require, as proposed, a qualified person who prepares a technical report summary that reports the results of a preliminary or final feasibility study to provide information for all 26 items? If not, which items should not be required? Should we require, as proposed, a qualified person who prepares a technical report summary that reports the results of an initial assessment to provide, at a

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[381] If provided, the additional information or explanation must comply with proposed subpart 1300 of Regulation S–K. *See* proposed Item 601(b)(96)(iv)(B)(23) of Regulation S–K.

[382] The qualified person must also discuss in this section any significant risks and uncertainties that could reasonably be expected to affect the reliability or confidence in the exploration results, mineral resource or mineral reserve estimates, or projected economic outcomes. *See* proposed Item 601(b)(96)(iv)(B)(24) of Regulation S–K.

[383] *See* proposed Item 601(b)(96)(iv)(B)(25) of Regulation S–K.

[384] *See* proposed Item 601(b)(96)(iv)(B)(26) of Regulation S–K.

[385] A technical report summary that reports the results of an initial assessment would have to include, at a minimum, the information specified in proposed Items 601(b)(96)(iv)(B)(1) through (13) and (22) through (26), and may also include the information specified in proposed Item 601(b)(96)(iv)(B)(21). A technical report summary that reports material exploration results would have to include, at a minimum, the information specified in proposed Items 601(b)(96)(iv)(B)(1) through (11) and (22) through (26). *See* proposed Item 601(b)(96)(iv)(A) of Regulation S–K.

[386] *See* Form 43–101F1 and note 351, *supra*.

[387] In contrast, Canada's NI 43–101 would permit the qualified person to include a disclaimer of responsibility if he or she relies on a report, opinion, or statement of another expert who is not a qualified person in preparing the technical report summary.

[388] As previously noted, if the technical report summary is filed as an exhibit to a Securities Act registration statement, the qualified person will be subject to liability as an expert for any untrue statement or omission of a material fact contained in the technical report summary under Section 11 of the Securities Act.

[389] *See*, the National Society of Professional Engineers (NSPE) Code of Ethics for Engineers, section II.2, which states: "Engineers shall perform services only in the areas of their competence. (a) Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved. (b) Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control. (c) Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment."

minimum, the information specified in paragraphs (iv)(B)(1) through (13) and (iv)(B)(22) through (26) of proposed Item 601(b)(96)?

112. The proposed rules would permit a qualified person who prepares a technical report summary that reports the results of an initial assessment to use mineral resources in economic analysis (and provide the information specified in paragraph (iv)(B)(21) of proposed Item 601(b)(96)). Should we permit a qualified person to do so if he or she wishes?

113. Should we require a qualified person who prepares a technical report summary that reports material exploration results to provide, at least, the information specified in paragraphs (iv)(B)(1) through (11) and (iv)(B)(22) through (26) of proposed Item 601(b)(96), as proposed?

114. Should we preclude a qualified person from disclaiming responsibility if he or she relies on a report, opinion, or statement of another expert who is not a qualified person in preparing the technical report summary, as proposed? Why or why not?

115. Should we require that the technical report summary not include large amounts of technical or other project data, either in the report or as appendices to the report, as proposed? Why or why not? Should we require a qualified person to draft the technical report summary to conform, to the extent practicable, with plain English principles under the Securities Act and Exchange Act, as proposed?

4. Requirements for Internal Controls Disclosure

Although not called for by Guide 7, some registrants provide disclosure about their internal controls, including quality control and quality assurance measures, which they have put in place to help ensure the reliability of their disclosure of exploration results and estimates of mineral resources and mineral reserves. The staff has also requested, on a case by case basis, that registrants provide a brief description of the quality control and quality assurance protocols for sample preparation, controls, custody, assay precision and accuracy as they relate to exploration programs.

We believe that disclosure about the internal controls that a registrant uses to help ensure the reliability of its disclosure of exploration results and estimates of mineral resources and mineral reserves would benefit investors. Accordingly, we are proposing to require that a registrant describe the internal controls[390] that it uses in its exploration and mineral resource and reserve estimation efforts. As specified in the proposed rules, such disclosure should address quality control and quality assurance programs, verification of analytical procedures, and comprehensive risk inherent in the estimation.[391] Such disclosure would help investors evaluate whether the registrant has established acceptable levels of certainty and precision during exploration and whether and how it has verified and validated the quality of the data used in its analysis. In addition, we note that this requirement is consistent with disclosure requirements in most foreign mining jurisdictions.[392]

A proposed instruction would state that a registrant must provide the required internal controls disclosure whether it is providing summary disclosure under proposed Item 1303, individual property disclosure under proposed Item 1304, or under both items.[393] Estimating mineral resources and reserves requires use of statistical techniques to estimate tonnages and grades based on data derived from laboratory analysis of representative samples. In any such scientific study, best practice requires the analyst to disclose the quality control and quality assurance techniques employed to ensure the data used in the analysis is reliable.[394] We believe this same practice should apply when preparing and analyzing data for the purpose of individual property disclosure. We also believe an internal controls disclosure requirement is particularly important for a company with multiple properties in order to ensure that best practice is followed across all properties.

Moreover, all the CRIRSCO-based codes require the disclosure of quality control and quality assurance procedures as they relate to exploration results (data) and techniques and assumptions (analysis) used for mineral resource and reserve estimation.[395] In addition, the listing rules of several of these jurisdictions specifically call for disclosure of the internal controls relating to estimates of mineral resources and reserves.[396] Our proposal is substantially similar to these internal control disclosure requirements and therefore should not significantly alter the disclosure practices of those registrants that are listed in these jurisdictions. For registrants that are not currently subject to an internal controls disclosure requirement, we believe investors would benefit from such disclosure, though we recognize that registrants may incur additional costs.

Request for Comment

116. Should we require registrants to describe the internal controls that they use to help ensure the reliability of their disclosure of exploration results and estimates of mineral resources and mineral reserves, as proposed? Should we require that such internal controls disclosure address quality control and quality assurance programs, verification of analytical procedures, and comprehensive risk inherent in the estimation, as proposed? Are there other items, in addition to or in lieu of those proposed items, that should be included in such disclosure? Are there items that should be excluded from the proposed internal controls disclosure requirement? In each case, why or why not?

117. Should we require registrants to describe the internal controls that they use to help ensure the reliability of their disclosure of exploration results and estimates of mineral resources and mineral reserves, as proposed? Should we require that such internal controls disclosure address quality control and quality assurance programs, verification of analytical procedures, and comprehensive risk inherent in the estimation, as proposed? Are there other items, in addition to or in lieu of those proposed items, that should be included in such disclosure? Are there items that should be excluded from the proposed internal controls disclosure

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[390] Internal controls in this context refers to the internal controls used to ensure reliable disclosure of exploration results and estimation of mineral resources and mineral reserves. It is not to be confused with internal control over financial reporting. In this regard, the Commission's disclosure requirements for registrants engaged in oil and gas producing activities require similar disclosure of internal controls over estimation efforts. *See* Item 1202(a)(7) of Regulation S–K. (17 CFR 229.1202(a)(7)).

[391] *See* proposed Item 1305 of Regulation S–K.

[392] *See* JORC Table 1 checklist and NI 43–101 pt. 3.3, which call for disclosure of quality control and quality assurance programs. The SME Petition also recognizes the need for and importance of appropriate internal and disclosure controls in the estimation of mineral reserves. *See* SME Petition for Rulemaking at 17.

[393] *See* the Instruction to proposed Item 1305 of Regulation S–K.

[394] *See* S.C. Kazmierczak, "Laboratory Quality Control: Using Patient Data to Assess Analytical Performance," in *Clinical Chemistry and Laboratory Medicine* 617–627 (2003); *see generally* M.J. Chandra, *Statistical Quality Control* (2001).

[395] *See, e.g.*, Canada's NI 43–101 pt. 3.3 and 43–101F1 Item 11. *See also* JORC Table 1 and SAMREC Table 1 T3.

[396] *See, e.g.*, ASX Listing Rule 5.21.5 which requires registrants to disclose "[a] summary of the governance arrangements and internal controls that the mining entity has put in place with respect to its estimates of mineral resources and ore reserves and the estimation process."

requirement? In each case, why or why not?

H. Conforming Changes to Certain Forms Not Subject to Regulation S–K

1. Form 20–F

Foreign private issuers [397] use Form 20–F [398] as a registration statement under Section 12 of the Exchange Act [399] or as an annual or transition report filed under Section 13(a) [400] or 15(d) of the Exchange Act.[401] Form 20–F also provides much of the substantive disclosure requirements for foreign private issuers filing Securities Act registration statements on Forms F–1,[402] F–3 [403] and F–4.[404]

The Commission revised Form 20–F in 1999 to conform its disclosure requirements to the international disclosure standards endorsed by the International Organization of Securities Commissions ("IOSCO") in September 1998.[405] As a result, Form 20–F, rather than Regulation S–K, provides the primary non-financial disclosure requirements for foreign private issuers under the Securities Act and the Exchange Act. For example, Item 4.D of Form 20–F sets forth the disclosure requirements for a foreign private issuer's property [406] rather than Item 102 of Regulation S–K.

We believe that the proposed rules should apply equally to foreign private issuers and domestic registrants. This treatment would be consistent with the current requirements for foreign private issuers and domestic registrants under Form 20–F [407] and Item 102 of Regulation S–K whereby both foreign private issuers and domestic registrants provide the disclosures set forth in Guide 7.[408]

Accordingly, in order to make foreign private issuers filing on Form 20–F subject to the new mining disclosure regime, we propose to amend Form 20–F by adding an instruction to Item 4 that issuers engaged in mining operations must refer to and, if required, provide the disclosure under subpart 1300 of Regulation S–K.[409] We further propose to remove in their entirety the current instructions to Item 4.D of Form 20–F, which, among other matters, limit the disclosure of estimates to proven and probable reserves.[410] Because the proposed rules would require the disclosure of determined mineral resources, mineral reserves and material exploration results by a registrant with material mining operations, the Item 4.D instructions would be inconsistent with the proposed new disclosure requirements.

In addition, we propose to add an instruction to the exhibits section of Form 20–F stating that a registrant that is required to file a technical report summary pursuant to Item 1302(b)(2) of Regulation S–K must provide the information specified in Item 601(b)(96) of Regulation S–K as an exhibit to its registration statement or annual report on Form 20–F.[411] This would make the same technical report summary filing requirements applicable to domestic registrants apply as well to foreign private issuers registering securities or reporting pursuant to Form 20–F.

Thus, following adoption of these proposed revisions to Form 20–F, foreign private issuers that use Form 20–F to file their Exchange Act annual reports and registration statements, or that refer to Form 20–F for their Securities Act registration statements on Forms F–1, F–3 and F–4, would have to comply with the mining disclosure requirements of new Regulation S–K subpart 1300. This would include Canadian registrants that report pursuant to Form 20–F and that currently are permitted to provide mining disclosure under NI 43–101 pursuant to the "foreign or state law" exception under Item 102 and Guide 7. We note that the proposed disclosure requirements would be substantially similar to Canada's NI 43–101. As previously noted, the proposed rules would eliminate this "foreign or state law" exception.[412] Thus, the sole group of Canadian registrants that could continue to report pursuant to Canadian disclosure requirements following adoption of the revised mining disclosure rules would be those Canadian issuers that report pursuant to the Multijurisdictional Disclosure System ("MJDS").[413] We are not proposing to subject MJDS registrants to new subpart 1300 because the ability of those registrants to use their Canadian disclosure documents for purposes of their Exchange Act and Securities Act filings is based on their eligibility to file under the MJDS, and not on the "foreign or state law" exception under Guide 7 and Item 102.

Request for Comment

118. Should we amend Form 20–F to conform it to the disclosure requirements of subpart 1300 of Regulation S–K and Item 601(b)(96), as proposed?

119. Should foreign private issuers that use or refer to Form 20–F for their SEC filings be subject to the same mining disclosure requirements as

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[397] A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that has more than 50% of its outstanding voting securities held of record by U.S. residents, and regarding which any of the following is true: a majority of its officers and directors are citizens or residents of the United States, more than 50 percent of its assets are located in the United States, or its business is principally administered in the United States. *See* Securities Act Rule 405 (17 CFR 230.405) and Exchange Act Rule 3b–4(c) (17 CFR 240.3b–4(c)).

[398] 17 CFR 249.220f.

[399] 15 U.S.C. 78l.

[400] 15 U.S.C. 78m(a).

[401] 15 U.S.C. 78o(d).

[402] 17 CFR 239.31.

[403] 17 CFR 239.33.

[404] 17 CFR 239.34.

[405] *See* Release No. 33–7745 (September 28, 1999), [64 FR 53900] (October 5, 1999).

[406] Form 20–F Item 4.D provides that the registrant must provide information regarding any material tangible fixed assets, including leased properties, and any major encumbrances thereon, including a description of the size and uses of the property; productive capacity and extent of utilization of the company's facilities; how the assets are held; the products produced; and the location. The registrant must also describe any environmental issues that may affect the company's utilization of the assets. With regard to any material plans to construct, expand or improve facilities, the registrant must describe the nature of and reason for the plan, an estimate of the amount of expenditures including the amount of expenditures already paid, a description of the method of financing the activity, the estimated dates of start and completion of the activity, and the increase of production capacity anticipated after completion.

[407] Instruction 1 to Item 4 of Form 20–F directs the registrant to "[f]urnish the information specified in any industry guide listed in Subpart 229.800 of Regulation S–K."

[408] As discussed in section I, *supra*, Canadian registrants are currently able to provide disclosure pursuant to NI 43–101 under the foreign law exception included in Item 102, Guide 7 and Form 20–F. Accordingly, the staff has not objected to disclosure by such registrants of resources as well as reserves calculated in accordance with Canadian law.

[409] *See* proposed Instruction 3 to Item 4 of Form 20–F.

[410] These instructions provide, among other matters, that, in the case of an extractive enterprise, other than an oil and gas producing activity, the issuer must provide material information about production, reserves, locations, developments and the nature of its interest. If individual properties are of major significance, the issuer must provide more detailed information about those properties and use maps to disclose information about their location. These instructions further provide that, in documents filed publicly with the Commission, the issuer must not disclose estimates of reserves unless the reserves are proven or probable and must not give estimated values of those reserves, unless foreign or state law requires the issuer to disclose the information. *See* Instruction 1 to Item 4.D of Form 20–F.

[411] *See* proposed Instruction 17 to Form 20–F. Because Forms F–1, F–3 and F–4 are already subject to the exhibit requirements of Item 601 of Regulation S–K, registrants using those forms that meet the requirements of proposed Item 1302(b)(2) would have to file a technical report summary as an exhibit pursuant to proposed Item 601(b)(96).

[412] *See* section II.E.1, *supra*.

[413] The MJDS permits seasoned Canadian issuers meeting certain other requirements to use their Canadian disclosure documents when filing their Exchange Act registration statements and annual reports on Form 40–F or their Securities Act registration statements on Forms F–10, F–7, F–8 and F–80.

domestic mining registrants, as proposed? Why or why not?

120. Should we continue to permit Canadian issuers to provide disclosure under NI 43–101, as they are currently allowed to do pursuant to the foreign or state law exception, as an alternative to providing disclosure under the proposed rules? If so, what would be the justification for such differential treatment?

2. Form 1–A

Regulation A provides an exemption from the registration requirements of the Securities Act for certain securities offerings that satisfy specified conditions, such as filing an offering statement with the Commission,[414] limiting the dollar amount of the offering[415] and, in certain instances, filing ongoing reports with the Commission.[416] Form 1–A is the offering statement used by issuers that are eligible to engage in securities offerings under Regulation A.[417]

The Commission amended Regulation A in March of 2015 to permit two tiers of offerings: Tier 1, for offerings of up to $20 million of securities within a 12-month period; and Tier 2, for offerings of up to $50 million of securities within a 12-month period.[418] The amendments require the filing and qualification of Form 1–A for both Tier 1 and Tier 2 offerings and impose ongoing disclosure obligations for Tier 2 offerings.[419] The Commission further amended Part II of Form 1–A by eliminating the Model A (Question and Answer) disclosure format and updating the Model B (Narrative) disclosure format allowed for both tier offerings.[420]

When updating Item 7 of Part II of Form 1–A concerning the required "Description of Business" disclosure, the Commission added a provision stating that the disclosure guidelines in all Securities Act Industry Guides must be followed. The provision also stated that, to the extent that the industry guides are codified into Regulation S–K, the Regulation S–K industry disclosure items must be followed.[421]

The purpose of this provision was to incorporate into Form 1–A the disclosure guidance in all of the Securities Act Industry Guides.[422] Moreover, because Regulation S–K does not directly apply to Form 1–A, the Commission sought to require Form 1–A issuers to follow the disclosure guidelines in any industry guides that have been codified as disclosure items under Regulation S–K.

Because this provision, however, only appears in Item 7(c) of Part II, which governs "business" disclosure, we are proposing to amend Part II of Form 1–A to apply the scope of the requirement to the description of property for certain issuers by adding similar language under Item 8 of Part II to Form 1–A.[423] Specifically, in order to require the Form 1–A property disclosure requirements to include the mining disclosure provisions under proposed subpart 1300 of Regulation S–K, we propose to add a provision stating that issuers engaged in mining operations must refer to and, if required, provide the disclosure under subpart 1300 of Regulation S–K in addition to any disclosure required by Item 8.

We also propose to amend the instruction to Item 8, which currently provides that "[d]etailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given." Because much of the disclosure under proposed subpart 1300 of Regulation S–K would require detailed descriptions of mining properties, the proposed rules would amend this instruction by excepting from its scope the disclosure required under these rules, as referenced in paragraph (b) of Item 8.

Thus, Regulation A issuers with material mining operations would be subject to all of the disclosure requirements in subpart 1300 of Regulation S–K. In order to require those Regulation A issuers to be subject to the new subpart's technical report summary filing requirement, we propose to amend Item 17 (Description of Exhibits) of Part III under Form 1–A by adding a provision stating that an issuer that is required to file a technical report summary pursuant to Item 1302(b)(2) of Regulation S–K must provide the information specified in Item 601(b)(96) of Regulation S–K as an exhibit to its Form 1–A.[424]

Request for Comment

121. Should we amend Form 1–A to require Regulation A issuers engaged in mining operations to refer to, and if required, provide the disclosure under subpart 1300 of Regulation S–K, in addition to any disclosure required by Item 8 of that Form, as proposed? Why or why not? Alternatively, should the disclosure requirements in proposed subpart 1300 apply to only some Regulation A issuers (*e.g.,* Regulation A issuers in Tier 2 offerings)? Should we instead exempt all Regulation A issuers from the proposed subpart 1300 disclosure requirements?

122. In lieu of imposing full subpart 1300 disclosure requirements on Regulation A issuers, should we limit, in whole or in part, the proposed subpart 1300 disclosure requirements for issuers in Regulation A offerings? If so, should these requirements be limited only for issuers in Tier 1 offerings? Why or why not? Further, which provisions of proposed subpart 1300 should, and should not, apply to issuers in Regulation A offerings? For example, should we require compliance with Item 1302's requirement to file the technical

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[414] *See* Securities Act Rule 251(d) (17 CFR 230.251(d)).

[415] *See* Securities Act Rule 251(a) (17 CFR 230.251(a)).

[416] *See* Securities Act Rule 257 (17 CFR 230.257).

[417] 17 CFR 230.251 through 230.263. To be eligible to offer securities under Regulation A, at a minimum, an issuer must be organized and have its principal place of business in the United States or Canada. Excluded from Regulation A eligibility are: Exchange Act reporting companies; blank check companies; investment companies registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or business development companies as defined under that Act; issuers of fractional undivided interests in oil, gas or mineral rights; issuers that have been subject to a Commission order under Exchange Act Section 12(j) within 5 years preceding the filing of the offering statement; issuers that have failed to file the reports required by Regulation A (under 17 CFR 230.257) during the two years preceding the filing of the offering statement; and issuers that have been disqualified under Securities Act Rule 262. *See* Securities Act Rule 251(b) (17 CFR 230.251(b)).

[418] *See* Release No. 33–9741 (March 25, 2015) [80 FR 21806 (April 20, 2015)] (the "2015 Regulation A Adopting Release").

[419] The Commission adopted new Forms 1–K (annual report), 1–SA (semi-annual report) and 1–U (current report) for the Tier 2 ongoing reporting regime. The Commission also adopted Form 1–Z, an exit form, which must be filed by Tier 1 issuers upon termination or completion of the offering and by most Tier 2 issuers when eligible to suspend ongoing reporting.

[420] Issuers also have the option of providing disclosure under Part II of Form 1–A that meets the requirements of Part I of either Form S–1 or Form S–11.

[421] *See* Form 1–A, Part II, Item 7(c).

[422] *See* Release No. 33–9497 (December 18, 2013) [79 FR 3926 (January 23, 2014)] ("Updates to the Offering Circular would also incorporate the disclosure guidelines in the Securities Act Industry Guides . . ."); *see also* the 2015 Regulation A Adopting Release ("As adopted, the Offering Circular includes disclosure based on disclosure guidelines set forth in the Securities Act Industry Guides . . .").

[423] *See* proposed Item 8(b) of Form 1–A. Item 8 (Description of Property) currently requires that an issuer: "[s]tate briefly the location and general character of any principal plants or other material physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held. Include information regarding the suitability, adequacy, productive capacity and extent of utilization of the properties and facilities used in the issuer's business." The proposed rules would designate this current provision as paragraph (a) of Item 8.

[424] *See* proposed paragraph (15) under Item 17 of Part III under Form 1–A.

report summary as an exhibit only in Tier 2 offerings?

123. Would limiting disclosure of the information required under proposed subpart 1300 for issuers in Regulation A offerings increase the risk of inaccurate disclosure in such offerings or otherwise increase risks to investors?

III. General Request for Comments

We request and encourage any interested person to submit comments on any aspect of our proposals, other matters that might have an impact on the amendments, and any suggestions for additional changes. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate.

IV. Economic Analysis

As discussed above, we are proposing revisions to the property disclosure requirements for mining registrants under the Securities Act of 1933 and the Securities Exchange Act of 1934. The proposed revisions are intended to modernize the Commission's mining disclosure requirements and policies by aligning them with industry practices and global regulatory practices and standards. Overall, we believe that the proposed revisions would increase the amount and quality of information about a registrant's mining operations available to investors as well as provide a single source in Regulation S–K for these disclosure obligations. We further believe that this will facilitate compliance by eliminating the complexity resulting from the existing structure of Commission disclosure obligations in Regulation S–K and staff disclosure guidance in Industry Guide 7.[425]

We are mindful of the costs imposed by, and the benefits obtained from, our proposed revisions. In this section we analyze the expected economic effects of the proposed revisions relative to the current baseline, which consists of the current regulatory framework and market practices. We consider the potential economic impact of the proposed revisions on the main affected parties, including registrants, investors and other financial statement users, and mining professionals, such as geologists and engineers, who provide services to registrants in support of mineral exploration and estimation of mineral resources and reserves. Our analysis considers the anticipated benefits and costs of the proposed revisions as well as the likely impact on efficiency, competition, and capital formation.[426]

We also analyze the potential benefits and costs of reasonable alternatives to the proposed revisions. The alternatives we consider below represent different approaches to achieving the goal of modernizing the Commission's mining disclosure requirements and policies. Given the goal of updating the existing regulatory framework, we evaluate the potential costs and benefits of these alternative approaches against the potential costs and benefits of the proposed disclosure requirements, rather than against the baseline.

A. Baseline

To assess the economic impact of the proposed revisions, our baseline consists of the current disclosure requirements and policies in Item 102 of Regulation S–K, Guide 7 and Form 20–F and current market practices. We also consider the CRIRSCO-based disclosure codes because mining registrants compete in the international commodities and capital markets, making international disclosure standards an important benchmark for investors evaluating mining companies. Furthermore, these standards are relevant to consider because, as discussed above, many mining registrants are foreign private issuers or U.S. incorporated registrants with reporting obligations in foreign jurisdictions. Thus, to the extent that the proposed revisions align the Commission's requirements with the CRIRSCO-based disclosure codes, we expect their economic impact to be lower for these registrants.

1. Affected Parties

The proposed revisions would primarily affect current and future registrants with mining activities that are, or would be, subject to the mining disclosure requirements and policies contained in Item 102 of Regulation S–K and in Guide 7. In addition to U.S. registrants with mining operations that are required to report under Regulation S–K in their annual reports and registration statements, the proposed revisions would affect foreign private issuers with mining operations that file their Exchange Act annual reports and registration statements using Form 20–F, or that refer to Form 20–F for certain of their disclosure obligations under Securities Act registration statements filed on Forms F–1, F–3 and F–4. Moreover, the affected registrants would include mining companies filing Form 1–A offering statements under Regulation A. Investors, analysts, and other users of the information in the registrants' annual reports and registration statements filed with the Commission would also be affected by the proposed revisions. Finally, mining professionals, such as geologists and mining engineers, who provide services to registrants related to exploration and estimation of mineral resources and reserves would be potentially affected due to the proposed qualified person requirement and related provisions.

To estimate the number of current registrants that would be potentially affected by the proposed revisions, we first consider the active registrants as of December 2015 that filed annual reports or relevant registration statements at least once from January 2014 through December 2015. We then identify registrants with mining primary Standard Industrial Classification ("SIC") codes.[427] We also identify those registrants without mining primary SIC codes that provide disclosure concerning their mining operations in their SEC filings pursuant to Item 102 of Regulation S–K and Guide 7. Based on this approach, we estimate that the total number of potentially affected registrants is 345 (50 of which are registrants that do not have mining primary SIC codes).

Among these registrants, we anticipate that the proposed revisions would have a more significant effect on those mining registrants that are *not* currently reporting based on CRIRSCO standards. To estimate the number of registrants reporting based on CRIRSCO standards, we identify those registrants incorporated in jurisdictions using CRIRSCO-based codes in addition to those U.S. incorporated registrants that we can manually verify are cross or dual listed, or otherwise reporting, in CRIRSCO jurisdictions. Out of 345 registrants, we identify 129 registrants—85 foreign private issuers and 44 U.S. registrants—that are potentially reporting mining operations according to CRIRSCO-based disclosure standards.

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[425] *See* SME Petition for Rulemaking at 9.

[426] Securities Act Section 2(a) and Exchange Act 3(f) require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Exchange Act Section 23(a)(2) requires us, when proposing rules under the Exchange Act, to consider the impact that any new rule would have on competition and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[427] Specifically, the mining SIC codes considered are 1000, 1011, 1021, 1031, 1040, 1041, 1044, 1061, 1081, 1090, 1094, 1099, 1220, 1221, 1222, 1231, 1400, 1422, 1423, 1429, 1442, 1446, 1455, 1459, 1474, 1475, 1479, 1481, 1499, 3300, 3334, and 6795.

Accordingly, we estimate that there are 216 identified registrants that solely report to the Commission and would therefore be more significantly affected by the proposed revisions than registrants that report elsewhere.

Included among the 129 registrants that are potentially reporting mining operations according to CRIRSCO-based disclosure standards are 63 Canadian registrants. As discussed above, Canadian registrants are currently able to provide disclosure in their Commission filings pursuant to NI 43–101, in addition to the disclosure called for by Guide 7 or Form 20–F. A number of the proposed revisions would more closely align our disclosure requirements with those in NI 43–101. As such, we estimate that the Canadian registrants that are currently providing disclosure pursuant to NI 43–101 likely would be less significantly affected by the proposed revisions than the 66 non-Canadian registrants that are potentially reporting mining operations according to CRIRSCO-based disclosure standards.[428]

2. Current Regulatory Framework and Market Practices

As discussed in Sections I and II above, we evaluate the economic effects of the proposed revisions against the Commission's current disclosure requirements and policies. Below we discuss three economically important aspects: (1) The structure and detail of the current disclosure framework, (2) the scope of the current disclosure framework, and (3) the lack of an expertise requirement for the preparer of technical information in the disclosures.

i. Structure and Detail of Current Disclosure Framework

The following aspects of the current disclosure regime may give rise to compliance challenges for mining registrants:

- *Overlapping disclosure framework.* The current disclosure framework is set forth in Item 102 of Regulation S–K, which is a Commission rule, Form 20–F, which is a form used by foreign private issuers that contains disclosure requirements,[429] and Industry Guide 7, which represents the disclosure policies and practices followed by the Division of Corporation Finance. This overlapping structure may give rise to unnecessary compliance burdens for mining registrants.[430]
- *Multiple thresholds for disclosure.* Item 102 of Regulation S–K currently implies a two-tiered reporting standard. Registrants with "significant" mining operations are referred to the more extensive disclosure policies in Guide 7, whereas registrants without significant mining operations but with one or more "principal" mines or other "materially important" properties are required to comply with only the more limited disclosure requirements in Item 102. As discussed above, Commission staff historically has advised that registrants apply a materiality standard for disclosure and, when that standard is met, provide disclosure according to both Item 102 and Guide 7.
- *Level of detail.* Because the disclosure policies in Guide 7 are broadly drafted, registrants often rely on staff guidance to apply those policies. For example, as discussed above, Guide 7 calls for the disclosure of mineral reserves, defined as the part of a mineral deposit that can be economically and legally extracted or produced. It does not, however, specify the level of geological evidence or the analysis required, such as the modifying factors the registrant should consider, to convert existing mineral deposits to reserves. By contrast, the CRIRSCO standards specify a more detailed framework for determination and disclosure of mineral reserves that specifically addresses such issues. These aspects of the current disclosure framework may have rendered it unnecessarily complex and confusing for mining registrants, especially new registrants. In this regard, industry participants have raised concerns regarding the need to rely on informal staff guidance to ensure compliance.[431] Reliance on staff guidance also may affect the consistency of the disclosures, which can impact comparability across registrants and over time for investors.

ii. Scope of the Current Disclosure Requirements and Policies

The technological process for evaluating the value of a mineral property starts with mineral exploration, then continues with estimation of mineral resources (*i.e.*, the quantity and quality of the material of interest that has economic prospects of extraction), which in turn forms the basis for the estimation of mineral reserves (*i.e.*, the amount of material that can be extracted economically). As discussed above, Item 102 of Regulation S–K, Guide 7 and Form 20–F currently call for the disclosure of mineral reserves and preclude the disclosure of non-reserve estimates such as mineral resources unless required by foreign or state law. In practice, only Canadian issuers have been able to take advantage of this exception because only Canada has adopted its mining disclosure requirements as a matter of law.[432] In addition, none of Guide 7, Item 102 of Regulation S–K or Form 20–F calls for or requires disclosure of mineral exploration results. By contrast, CRIRSCO-based codes require disclosure of material exploration results and material mineral resources in addition to material mineral reserves.

The scope of the Commission's current disclosure regime relative to current industry practices for evaluating the prospects of mining properties can result in mining registrants omitting from their disclosures information about their mineral resources they possess but are not allowed to disclose. Omitting such information may increase the information asymmetries between mining registrants and investors, which could lead to potentially negative capital market consequences, such as reduced stock market liquidity and higher cost of capital.[433] Moreover, because mining companies providing disclosure in foreign jurisdictions based on CRIRSCO standards are required to disclose material exploration results and mineral resources, U.S. registrants may suffer adverse competitive effects to the extent that the more limited scope of their disclosures has negative capital market effects. Industry participants have raised concerns regarding the adverse competitive effects potentially stemming from the current disclosure regime and, in particular, from the inability to disclose mineral resources.[434]

Currently, registrants can supplement, to some extent, the limited scope of the current disclosure regime in two ways. First, although there is no requirement to disclose material exploration results, registrants can voluntarily disclose such information in their SEC filings. However, the value of such voluntary disclosures to investors may be reduced in the absence of a requirement that ensures consistency and quality of the disclosures. Second, regarding the disclosure of mineral resources, Commission staff has, on a case-by-case basis, not objected to disclosure of non-reserve mineral deposits in the form of "mineralized material." In practice, although the mineral resources covered by the definition of "mineralized material" generally correspond with the indicated and measured mineral resource categories defined in the CRIRSCO standards, they are not completely consistent with CRIRSCO resource categories. For example, Commission staff historically has advised registrants that they should not disclose as mineralized material in their SEC filings non-reserve mineral deposits that would be equivalent to inferred resources. Moreover, the absence of specific, published guidelines establishing how registrants should estimate and report mineralized materials may have contributed to compliance uncertainty and lack of consistency in the disclosures.

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[428] For example, the technical report summary requirement in our proposed rule is very similar to the NI 43–101 requirement to file a technical report summary. That requirement is not, however, part of the other CRIRSCO-based codes, so only Canadian filers would not incur an additional cost to prepare the summary report.

[429] *See* 17 CFR 249.220f.

[430] *See* section II.A and note 26, *supra*.

[431] *Id.*

[432] *See* note 14, *supra*.

[433] The link between asymmetric information and cost of capital is well established in the academic literature. See, *e.g.*, Douglas W. Diamond and Robert. E. Verrecchia "Disclosure. Liquidity, and the Cost of Capital" (1991), *Journal of Finance*, Volume 46, Issue 4, pp. 1325–1359, and David Easley and Maureen O'Hara, "Information and the cost of capital" (2004), *Journal of Finance*, Volume 59, Issue 4, pp. 1553–1583.

[434] *See* note 27, *supra*.

As discussed above, disclosure of mineral resources is currently prohibited unless required by foreign or state law.[435] Under this exception, Canadian registrants are able to disclose mineral resources in SEC filings if they do so in their Canadian filings. Therefore, any potential competitive disadvantage of not being allowed to disclose mineral resources in SEC filings primarily affects U.S. registrants and non-Canadian foreign registrants,[436] which in our estimates represent about 82% of the registrants potentially affected by the proposed revisions. Given this, and also given that the disclosures of mineralized material that are currently permitted in SEC filings are not directly comparable to the disclosures of mineral resources required by the CRIRSCO standards, some registrants have reported their mineral resources in press releases, on their Web site, or in their annual reports. Such disclosures, made outside of SEC filings, may present risks for investors who rely on such disclosures. First, these disclosures are not subject to the full range of disclosure rules and regulations, including corresponding liability provisions, to which SEC filings are subject (although disclosures outside SEC filings would be subject to the antifraud provisions of the federal securities laws), are not subject to staff review and comment, and may not be reported using commonly recognized standards.

iii. Role of Experts in Support of Disclosures of Mineral Reserves

As discussed above, Guide 7 provides, and Form 20–F requires that a registrant disclose the name of the person estimating the reserves and describe the nature of his or her relationship to the registrant. There is, however, no current disclosure policy or requirement in Guide 7, Item 102 or Form 20–F that a registrant must base disclosures of mineral reserves (or a study or technical report supporting such disclosures) on findings of a professional with a particular level of expertise. The absence of an expertise requirement is in contrast to the CRIRSCO-based codes, which all require that disclosures of mineral reserves—as well as exploration results and mineral resources—be based on information and supporting documentation prepared by a "competent" or "qualified person."[437]

In the absence of an expertise requirement, disclosures of exploration results, mineral resources and mineral reserves may be viewed as less credible. The lack of an expertise requirement may put U.S. registrants at a comparative disadvantage in terms of how investors value the disclosed information compared to companies disclosing mineral resources and reserves based on CRIRSCO-based codes.[438]

B. Analysis of Potential Economic Effects

In this section, we analyze the anticipated costs and benefits associated with the proposed revisions to the mining disclosure requirements.

1. Consolidation and Harmonization of the Mining Disclosure Requirements

As discussed above, the proposed revisions would consolidate the mining disclosure requirements and policies of Regulation S–K and Guide 7 into new subpart 1300 of Regulation S–K, and rescind Guide 7. Codifying the current mining disclosure requirements in Regulation S–K would provide a single source for a mining registrant's disclosure obligations, eliminating the complexity associated with the fact that Guide 7 provides staff guidance and is not incorporated in the Commission rules, such as in Regulation S–K, thus facilitating compliance and promoting more consistent disclosures to investors.

As described in Section II.A.1, the proposed revisions would replace the current multiple standards for disclosure (*i.e.,* "principal" mines, "other materially important" physical properties, and "significant" mining operations) included in Item 102 of Regulation S–K with a single materiality standard for when a registrant must provide disclosure about its mining properties or operations. The definition of "material" in the proposed rule would be the same as under Securities Act Rule 405 and Exchange Act Rule 12b–2. This single standard should reduce any confusion or compliance uncertainty that arises from the current multiple standards. In addition, the proposed rules would provide more detailed guidance to registrants about how to apply the proposed standard under varied circumstances,[439] which should further reduce compliance uncertainty and help ensure consistency in the disclosures. Finally, given that the proposed standard is similar to the disclosure standard under the CRIRSCO-based mining codes, the proposed revision would harmonize the U.S. standard with global practice.[440]

The proposed standard would generally be consistent with current staff guidance for applying the existing disclosure thresholds. To the extent that registrants currently follow this guidance in determining which disclosures to make concerning their mining operations, the proposed new threshold would not significantly alter existing disclosure practices.

As discussed above, the proposed rules would redefine the classifications of "exploration," "development" and "production" stage so that they apply to individual properties as well as the totality of a registrant's mining activities, the latter of which is the case in Guide 7. This individual property classification would in turn guide the classification of the registrant as a whole, as described above in Section II.A.2. Applying the classification of the technological stages at the property level should have several potential benefits. First, by providing the classification at the property level, the proposed rules would provide more precise information to investors about the nature and risk of registrants' mining operations. In addition, because the classification at registrant level would be derived from the individual property classifications, the proposed rules would prevent a registrant without material reserves from characterizing itself as a development stage or production stage company, which is possible under the current classification scheme.[441] Second, since many registrants have mining properties in different stages, the proposed rules would instruct how registrants should apply the definitions to their operations, thereby reducing compliance uncertainty. Third, the proposed rules would align the disclosure requirements with current accounting practice under U.S. GAAP and IFRS (as issued by the IASB),[442] facilitating consistency among the disclosures. Because registrants already possess the information necessary to be able to classify properties at the individual property level, and the proposed classifications are consistent with current accounting practice, we do not expect a significant increase in compliance costs for registrants.

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[435] See note 14, *supra.*

[436] *See* SME Petition for Rulemaking at 14.

[437] An author of a study or technical report that forms the basis of mineral reserves disclosure in a Securities Act registration statement is required to consent to the use of his or her name as an expert, and is therefore subject to expert liability under Section 11 of the Securities Act. *See also* 17 CFR 230.436 and 17 CFR 229.601(b)(23). While this provides some assurance that the disclosure accurately reflects the technical study or report, it does not require that the author have any minimum level of technical expertise.

[438] Under the current disclosure regime, registrants can choose to hire an expert with similar qualifications as those required by the CRIRSCO standards and voluntarily disclose this fact to mitigate any competitive disadvantage. However, investors may discount such disclosures if they are not derived from a formal regulatory requirement. Moreover, investors that tend to diversify their investments across companies in the mining sector, rather than in any specific mining company, may discount the sector as a whole in jurisdictions that are perceived to have less robust disclosure standards in this regard.

[439] *See, e.g.,* section II.B.1.i–iii, *supra.*

[440] *See* section II.B.1, *supra.*

2. Qualified Person and Technical Report Summary Requirements

As discussed above, we propose to require that every disclosure of mineral resources, mineral reserves and material exploration results be based on and accurately reflect information and supporting documentation prepared by an identified qualified person. Moreover, we propose to require that, for each material mining property, registrants obtain and file a signed and dated technical report summary prepared by this qualified person.

We anticipate that the qualified person requirement paired with the technical report summary requirement would enhance the accuracy, transparency, and credibility of the proposed disclosures for investors. For example, the requirement that the qualified person have at least five years of relevant experience and be an eligible member or licensee in good standing of a recognized professional association should ensure that the estimates provided in the disclosures are based on work consistent with current professional best practice. This should in turn increase the reliability and informational value of the disclosures. Moreover, the technical report summaries for material mining properties would provide investors and analysts with technical details to allow them to improve their own individual assessments of the value of the mining properties, including better estimates for their own forecasting models. These anticipated benefits should be especially pronounced in conjunction with the proposed disclosures of mineral resources and material exploration results, since estimates of mineral resources and material exploration results are typically associated, for technological reasons, with a higher degree of uncertainty compared to estimates of mineral reserves.

These potential benefits from the proposed qualified person requirement are not without associated costs.[443] Regarding the proposed qualified person requirement, we expect any increase in compliance costs to be related to an increase in search and hiring costs of qualified persons. Registrants that are not currently employing or contracting with professionals meeting the proposed definition of qualified person would incur costs, including expenses for identifying a pool of professionals that would meet the definition of qualified person and be willing to provide their services. The costs for services of a qualified person may also increase for such registrants due to the level of expertise required under the proposed rules. Because the required disclosures derive from activities mining registrants are already performing as a crucial part of their businesses (*i.e.*, mineral exploration and estimation of mineral resources and reserves), we believe that most registrants likely already engage experienced professionals meeting the proposed level of expertise, either as employees or as contractors. In particular, this should be the case for registrants reporting based on CRIRSCO standards, as those disclosure codes already require a similarly defined "qualified" or "competent" person to support the disclosures. To the extent registrants already engage professionals meeting the proposed qualified person requirement, the incremental compliance costs of the proposed requirement would be minimal or none.

Registrants that are currently employing or contracting with professionals meeting the proposed definition of a qualified person would not incur costs associated with hiring such a person but may nevertheless experience an increase in compensation costs. One reason for such an increase is that qualified persons would provide, sign and consent to the filing of more extensive documentation in support of the disclosures, which potentially would expose them to greater legal liability. Moreover, if the qualified person requirement reduces the pool of eligible mining professionals, compensation costs could increase due to increased competition among registrants for the services of these eligible professionals. However, we anticipate this competitive effect on compensation costs to be minor as there is currently a large pool of professionals both in the United States and around the world that would meet the definition of qualified person. For example, the Society for Mining, Metallurgy, and Exploration currently has 15,000 members around the world.[444] More than 800 of these members are registered with the organization and already meet the definition of a qualified person.[445] Moreover, a study by the Bureau of Labor Statistics reported that in 2014 there were 34,000 geoscientists, 16,500 geological and petroleum technicians, and 8,300 mining and geological engineers employed in the United States.[446] A significant fraction of these professionals would likely meet the definition of qualified person, or could meet it after some professional development.[447] For example, California alone had more than 5,000 recorded licensed professional geologists as of November 2014.[448] We note that these estimates largely exclude professionals who are active in foreign markets and who could also qualify.

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[441] *See* note 65, *supra*.

[442] *See* note 68, *supra*.

[443] Quantifying these cost are challenging due to data limitations. For example, we do not have access to data that would allow us to more precisely measure the current supply of mining professionals meeting the definition of a "qualified person." We also do not have access to readily available data sources of comprehensive compensation data for geologists and mining engineers (in the United Sates or other countries), which would help us estimate the marginal cost of hiring a qualified person with the minimum level of expertise versus professionals that do not qualify as qualified persons.

[444] *See* the SME Web site at: *https://www.smenet.org/about-sme/overview*.

[445] *See* the SME Web site at: *http://www.smenet.org/membership/registered-member-directory*.

[446] *See* Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2016–17 Edition*, Geoscientists, (available at: *http://www.bls.gov/ooh/life-physical-and-social-science/geoscientists.htm*.), Geological and Petroleum Technicians, (available at: *http://www.bls.gov/ooh/life-physical-and-social-science/geological-and-petroleum-technicians.htm*), and Mining and Geological Engineers, (available at: *http://www.bls.gov/ooh/architecture-and-engineering/mining-and-geological-engineers.htm*).

[447] The increased demand for qualified persons' services is likely to incentivize more professionals to become qualified.

[448] See the Web site of the National Association of State Boards of Geology, *http://asbog.org/states/*

Regarding the proposed technical report summary requirement, we expect that registrants would experience an increase in compliance costs related to the preparation of the report summaries for material mining properties.[449] Even registrants that currently produce technical documentation and reports in compliance with requirements in other jurisdictions would likely incur additional costs to conform the reports to the specific requirements in the proposed rule. In this regard, the proposal seeks to limit the additional compliance costs by requiring that a registrant only has to file a technical report for material properties, rather than for all its properties, and only when the registrant is first reporting, or reporting a material change in, exploration results, resources and reserves.

The proposed qualified person and technical report summary requirements are similar to the corresponding requirements in the CRIRSCO-based disclosure codes, which generally should mitigate the incremental impact of the proposed requirements on registrants currently reporting in jurisdictions that use these codes. However, some of the differences may be economically important. For example, although the CRIRSCO jurisdictions require that a company's exploration results, mineral resources and mineral reserves be based on and fairly reflect information and supporting documentation prepared by a "competent" or "qualified" person, only Canada and Australia require the filing of a technical report summary to support such disclosure.[450] Accordingly, we expect that the proposed technical report summary requirement would increase the costs of compliance for registrants currently reporting in foreign jurisdictions other than Canada and Australia. On the other hand, these registrants would receive the incremental benefits (identified above) associated with the filing of such report summaries.

The proposed rules do not require the qualified person to be independent of the registrant. The absence of an independence requirement is consistent with the CRIRSCO-based codes, with the exception of Canada where the qualified person supporting the registrant's mining disclosures must be independent of the company for new registrants or, in cases of significant changes to existing disclosures, for established registrants.[451] Although there is some evidence that outside experts reduce information asymmetries about companies' valuations in related circumstances,[452] we believe this benefit should be balanced against the additional cost of having to find and hire an outside expert, instead of using an existing affiliated expert. Moreover, an outside expert may in practice not be independent of the company if the person derives a large fraction of overall compensation from that same company. We also believe that the expert liability incurred under section 11 of the Securities Act would mitigate the potential for misleading or fraudulent disclosures by all qualified persons, whether or not the person is affiliated with the company or an independent expert.

We have considered reasonable alternatives to the proposed qualified person and technical report summary requirements. One alternative would be not to require or define the professional requirements of the expert producing information and supporting documents for the disclosures, but to require that registrants disclose the relevant qualifications and professional background of the expert as well as any affiliation with the registrant. Investors could use this information to decide for themselves if the expert is likely to be competent and reliable. Compared to the proposed rule, this alternative would potentially lower costs for the services provided by qualified persons since registrants could hire from a broader population of experts. Moreover, registrants that already use experts not meeting the definition of a qualified person under the proposed rule would avoid switching costs. However, this alternative would potentially lead to less consistency in the type of expertise and quality of reports across firms. Moreover, this alternative would significantly differ from the approach in the CRIRSCO standards of requiring a minimum level of expertise in support of the disclosures. As a result, even when keeping the actual level of competence of experts constant across jurisdictions, this alternative could lead to a perception among investors that disclosures of mineral resources and reserves within SEC filings are not as well supported as disclosures in the CRIRSCO jurisdictions, which could discourage investors from investing in securities of mining companies listed in the U.S. markets.

Another alternative would be not to require the filing of a technical report summary to reduce expected compliance costs and be consistent with the majority of CRIRSCO-based codes. Under this alternative, the potential benefits discussed above that come from investors having access to the information in the technical report summary would be foregone.

3. Treatment of Exploration Results

The proposed rules would require a registrant to disclose material exploration results (as and if determined by a qualified person) for each of its material mining properties. This proposed disclosure requirement would align the Commission's disclosure requirements for exploration results with those in CRIRSCO-based codes. The proposed rules also would provide guidance for registrants when exploration results are considered material.

Although the Commission's current disclosure requirements and policies do not provide for the disclosure of exploration results, some registrants

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cd_states.htm#California. A geologist licensed by any state in the United States, provided they have five years' relevant experience in mining with respect to the type of mineralization under consideration, would likely meet the proposed definition of a qualified person.

[449] It is challenging to estimate reliably the compliance costs associated with the requirement to prepare a technical report summary because of the diversity in the scope and complexity of the reports that are to be summarized and the labor costs (by sector of the industry and geographic location). Also, we could not find any studies that have examined this question. For purposes of the Paperwork Reduction Act, based on staff analysis of similar reporting requirements in other jurisdictions, we estimate that registrants would each incur between 11 and 50 burden hours to prepare the required technical report summary, depending on whether they are subject to CRIRSCO standards. These estimates assume that all the information required to prepare a technical report summary is already available to the qualified person as part of the scientific and engineering assessment required to support disclosure of exploration results, mineral resources, and mineral reserves. *See* Section V, *infra*.

[450] Canada's NI 43–101 requires a registrant to file a technical report summary, substantially similar to what we are proposing, for each material mining property. *See* NI 43–101 pt. 4. That Instrument also prescribes the form of the technical report summary. *See* Form 43–101F1. Australia's ASX requires all public disclosure of exploration results, mineral resources and mineral reserves to be accompanied by an appendix that reports pursuant to JORC Table 1. *See* ASX Listing Rules 5.7.1, 5.8.2 and 5.9.2. This requirement is equivalent to requiring an abbreviated version of the technical report summary.

[451] *See* NI 43–101 pt. 5.3.

[452] See, *e.g.*, Karl A. Muller III and Edward J. Riedl, "External Monitoring of Property Appraisal Estimates and Information Asymmetry" (2002), *Journal of Accounting Research*, Volume 40, Issue 3, pp. 865–881. Using a sample of UK investment property firms, the paper finds that bid-ask spreads are lower for firms employing external appraisers of property values versus those employing internal appraisers, suggesting the information asymmetry about the value of the company is lower in the former case.

disclose exploration results on a voluntary basis. Presumably, registrants currently providing such voluntary disclosures benefit from doing so. From an individual mining registrant's perspective, the proposed requirements would be beneficial if the associated incremental economic benefits exceed the incremental costs of complying with the disclosure requirements, as proposed. From an investor's perspective, the proposed rule would be incrementally beneficial if the expected benefit in terms of more efficient investment decisions due to the additional information exceeds the cost of processing the same information.

Because a new mining project inevitably starts from some form of exploration activity, disclosure of material exploration results would provide important information to investors about registrants' mining operations and potential growth opportunities. We expect the disclosure of exploration results by smaller mining registrants to be especially useful to investors as such registrants tend to have a narrower range of mining operations and fewer individual projects. We estimate that a majority of mining registrants are very small firms: 51% of mining registrants (176 out of the 345 registrants identified above) have $5 million or less in total assets, suggesting they are mainly exploration stage registrants.

It is important to recognize that exploration results, by themselves, without the assessment of geologic and grade continuity required in resource estimation, are inherently speculative. Thus, it may be difficult for investors to value exploration results accurately and there is a risk that some investors would put too much weight on this information, which in turn could lead to inefficient investment decisions. The proposed requirements are intended to mitigate any potential costs related to the uncertainty associated with the disclosure of exploration results in a couple of ways. First, the proposed rules would preclude the use of exploration results, by themselves, to derive estimates of tonnage, grade, and production rates, or in an assessment of economic viability. This should reduce the potential for overvaluing the disclosed exploration results. Second, disclosure of material exploration results must be based on the analysis of a qualified person submitting a technical report summary that is filed as an exhibit with the Commission. The proposed qualified person and technical report summary requirements should increase the accuracy and reliability of the disclosed exploration results. In addition, the proposed requirements would also increase the usefulness of this information to investors by aligning the disclosure of material exploration results with the requirements in CRIRSCO-based codes, which would improve the comparability of the disclosed information relative to similar disclosures by mining companies in jurisdictions such as Canada and Australia.

Quantifying the anticipated net benefit to investors from the proposed disclosure requirement is difficult. There is some academic evidence suggesting that investors respond favorably to the disclosures of exploration results. For example, an academic study of 1,260 exploration results announcements made by 307 unique Australian mining companies over the 2005–2008 time period documents an average abnormal stock return of 2.8% on the announcement day.[453] For each such company, the abnormal return was calculated relative to the return on the same day for a size-matched non-announcing commodity peer. Consistent with exploration results being more value relevant for smaller firms, the study also finds a significantly higher announcement day return for smaller firms, where size is measured by pre-announcement market capitalization. We also note that the announcements of explorations results in the sample were compliant with the 2004 edition of the Australian JORC code for mining disclosure, which contains requirements for disclosure of exploration results that are similar to the proposed requirements.[454]

We expect an increase in compliance costs for those registrants that disclose material exploration results for the first time for any particular project. These costs would include the assessment of materiality, the costs of preparing the required technical report summary, and the costs of reporting the results in annual reports and registration statements filed with the Commission. To the extent that these costs are fixed rather than scaled to the size of the project, the cost burden would be relatively larger for smaller registrants.

We note that the proposed requirement to disclose material exploration results does not impose an affirmative obligation to hire a qualified person to make a determination about exploration results. Registrants who perceive that the compliance costs related to engaging a qualified person are prohibitive can refrain from engaging a qualified person to make a determination about the exploration results. In that situation, the registrant would not be required to disclose material exploration results because the required information and documentation by an expert necessary to support the public disclosure of material exploration results would not be present.

The compliance costs of the proposed disclosure requirement should be substantially mitigated for registrants that already report based on CRIRSCO standards, as those standards have similar disclosure requirements for material exploration results.

The proposed rules require disclosure of determined material exploration results only with respect to individually material properties.[455] One alternative to the proposed requirement would be also to require disclosure of material exploration results when the registrant has determined that the aggregate mining operations are material but no individual property is material.[456] Relative to the proposed rules, this alternative would provide investors with more information concerning the prospects of the registrant's mining operations but it would be significantly costlier for affected registrants. The costs of this alternative could be mitigated by requiring the additional material exploration results to be presented in summary form.

4. Treatment of Mineral Resources

As discussed above, disclosure of mineral resources is currently precluded in SEC filings unless required pursuant to foreign or state law. Industry participants have raised concerns regarding the adverse competitive effects potentially stemming from the inability of U.S. registrants to disclose mineral resources.[457] These industry participants have stated that mining companies and their investors consider mineral resource estimates to be material and fundamental information about a company and its projects.[458]

The proposed rule would require a registrant with material mining operations to disclose specified information concerning any mineral resources that have been determined based on information and supporting documentation from a qualified person.

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[453] *See* Ron Bird, Matthew Grosse, and Danny Yeung, "The market response to exploration, resources, and reserve announcements by mining companies: Australian data" (2013), *Australian Journal of Management*, Volume 38, Issue 2, pp. 311–331.

[454] *See* the JORC Code, 2004 Edition, pts. 16, 17, and 18.

[455] *See* Section II.D., *supra.*

[456] *See* Section II.B.1, *supra.*

[457] *See* note 27, *supra.*

[458] *See* SME Petition for Rulemaking at 1 and 13.

In the absence of such information and supporting documentation, the registrant would not have mineral resources as defined in the proposed rules, and as such, would not be required or allowed to disclose mineral resources in a SEC filing.[459]

As proposed, a registrant with material mining operations that has multiple properties would be required to provide both summary disclosure about its mineral resources in addition to more detailed disclosure concerning its mineral resources for each material property.[460] As discussed above, the proposed requirement would expand the scope of the current disclosure regime, while aligning the Commission's mining disclosure rules with those in foreign jurisdictions based on the CRIRSCO standards.

We expect the proposed framework for disclosure of mineral resources to result in additional useful information concerning a registrant's operations and prospects. Because mining registrants already assess mineral resources in the course of developing mining projects, requiring information about mineral resources to be disclosed would significantly reduce the information asymmetries between investors and registrants. Reducing information asymmetry relating to mineral resources should lower the cost of capital and improve capital formation.[461]

Moreover, since the CRIRSCO-based codes already require similar disclosure of mineral resources, the proposed framework would improve competition among mining registrants by removing the competitive disadvantage that U.S. registrants currently experience relative to reporting firms in foreign jurisdictions. This also may improve the attractiveness of U.S. capital markets for mining companies. Similar to the case of the proposed requirement to disclose material exploration results, the proposed requirement to disclose mineral resources may be particularly beneficial to smaller exploration stage mining registrants (and their investors) as their valuations may be more dependent on non-reserve mineral deposits.

We note that for registrants that currently disclose "mineralized materials" there should be a comparatively lower incremental reduction in information asymmetries. Nonetheless, the proposed framework would result in disclosures that are more consistently presented and more transparent to investors, thereby increasing comparability of such information across mining registrants. For example, the differences between measured and indicated mineral resources would be clear under the proposed rules since they will be distinct and not aggregated as mineralized material. The proposed requirement that the disclosures must be supported by information and documentation provided by a qualified person would also improve the quality and reliability of the disclosures compared to the current disclosures of mineralized material. To the extent the above expected incremental improvement in disclosure to investors reduces information asymmetries, the efficiency of investment decisions would increase and registrants that currently disclose mineralized material may still experience a reduction in cost of capital. Finally, relative to the current practice for disclosure of mineralized materials, requiring the disclosure of mineral resources by rule should reduce registrant uncertainty and facilitate compliance.

Estimates of mineral resources are typically associated with a greater uncertainty than estimates of mineral reserves. To help investors better assess the uncertainty surrounding mineral resource estimates, the proposed disclosure framework would mandate a classification of mineral resources into inferred, indicated and measured mineral resources, in order of increasing confidence based on the level of underlying geological evidence, with the estimates for inferred mineral resources being the most uncertain.[462] In addition, we are proposing that resource disclosures must be supported by an initial assessment by a qualified person and that this assessment, at a minimum, must include a qualitative evaluation of modifying factors to establish the economic potential of the mining property or project. We believe that requiring an initial assessment by a qualified person would reduce the uncertainty surrounding mineral resource estimates and increase the value of the information for investors. Specifically, we believe that a well-defined and specific technical study to support disclosure of mineral resources should improve the accuracy and reliability of the mineral resource estimates for investors. Since estimates of mineral reserves are based on estimates of mineral resources, the greater accuracy of the resource findings should lead to better mineral reserve determinations.

The proposed rule would generate compliance costs for registrants with material mining operations that disclose mineral resources. The increase in costs would be greater for registrants not currently disclosing mineralized material. The costs would include the incremental costs (above the registrant's mineral resource assessment practices) of the initial assessment and the costs of preparing the technical report summary, in the case that one is required. As discussed above, if registrants are currently using a professional who would not meet the qualified person definition, search costs and potentially higher compensation costs may also be incurred. In deciding whether to disclose mineral resources, we expect companies would weigh the incremental compliance costs of producing reports that meet the required standards against the expected benefits stemming from such disclosure, based on their individual facts and circumstances.

The compliance costs associated with the proposed framework for disclosure of mineral resources would be mitigated to some extent for registrants that report in foreign jurisdictions with CRIRSCO-based disclosure codes given the similarity between the requirements in those codes and our proposal. In this regard, however, although all CRIRSCO-based codes require some type of study to support the determination and disclosure of mineral resources, most do not define a specific type of study. As such, the proposed initial assessment requirement could result in increased burdens for these mining registrants to the extent that our proposed initial assessment differs from registrants' practices for determining resources.

For example, although the CRIRSCO-based codes prohibit the use of inferred mineral resources to support a determination of mineral reserves, they typically permit the use of inferred mineral resources in a scoping study[463] as long as the competent or qualified person provides appropriate cautionary language regarding the low level of geological confidence in those resources. Accordingly, a registrant may incur costs if it has obtained a scoping study that would not be in compliance with the proposed rules because it contains an economic analysis that includes inferred mineral resources.[464]

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[459] In other words, the disclosure requirement would not be triggered if the registrant chose not to hire a qualified person because it would lack the information and documentation to support the disclosure of mineral resources, as required by the proposed rule.

[460] *See* the discussion in section II.B, *supra*.

[461] Although we expect disclosures that reduce information asymmetries to reduce cost of capital for the typical mining company, we also expect there to be a reallocation of capital from relatively low quality companies to higher quality companies as better information on the companies' prospects are revealed. This reallocation would help improve efficiency and capital formation overall, but also means that some poorer quality mining companies would likely experience a higher cost of capital.

[462] Because of the inherent uncertainty associated with inferred resources, we note that registrants may have an incentive to aggressively report such resources. However, this incentive would be mitigated by not allowing inferred resources to later be directly converted to mineral reserves. *See* section II.E.2, *supra*.

There is evidence suggesting that investors respond favorably to the disclosures of mineral resources. For example, the previously discussed study regarding the disclosure of exploration results also analyzes the announcement returns to disclosures of mineral resources.[465] Analyzing 624 resource announcements by 278 publicly traded Australian firms between 2005 and 2008, the authors document an average abnormal stock return of 2.5% on the announcement day. As for the exploration results announcements, the abnormal return was calculated relative to the return on the same day for a size-matched non-announcing commodity peer. Unlike the announcements of exploration results, the authors find no relation between company size and the abnormal returns. However, abnormal returns are significantly greater when a mining company announces mineral resources for the first time. The authors suggest this may be the case because much of the existing information asymmetry is resolved at the time of the first announcement.

One alternative to the proposed disclosure requirement for mineral resources is not to require the qualified person to provide an assurance that all issues relating to the relevant modifying factors can be resolved with further exploration and analysis. Instead, as is required by the CRIRSCO-based codes, the qualified person could be guided by the definition of mineral resources provided in the proposed rules in determining that the mineral resources have "reasonable prospects of economic extraction."[466] The compliance cost related to preparing an initial assessment to support mineral resource disclosure associated with this alternative would likely be lower than the costs associated with the proposed requirement. First, the alternative would reduce the amount of work that the qualified person has to do to support his or her determination of resources. In addition, the absence of the requirement to provide the specified assurance could reduce the qualified person's potential liability, and as a result, reduce the cost of engagement of the qualified person. At the same time, this alternative could increase the uncertainty surrounding the prospects of economic extraction of mineral resources and therefore reduce the value of the disclosure of such resources.

Another alternative we considered is not to require the preparation of a technical report summary, as in most CRIRSCO jurisdictions. This alternative would further lower compliance costs but would also reduce consistency in the disclosures and increase the uncertainty about the quality of the mineral resources estimates.

5. Treatment of Mineral Reserves

As discussed above, we propose to revise the definition of mineral reserves to align it with the CRIRSCO standards by requiring that the qualified person apply defined modifying factors to the indicated and measured mineral resources in order to convert them to mineral reserves. The proposed rules would permit either a pre-feasibility or a feasibility study to provide the basis for determining and reporting mineral reserves. The proposed rules would also require that the reserve estimations and disclosures thereof be based on the work of a qualified person.[467]

We expect the proposed revisions to the disclosure of mineral reserves to have several economic benefits. First, the proposed revisions specify in more detail the process that is required for registrants to convert mineral resources to probable or proven mineral reserves, including, as noted above, requiring the application and description of relevant modifying factors that affect the conversion. The increased detail and clarity of the proposed requirements should lead to more reliable and consistent disclosures. Second, because the determination of mineral reserves would be based on the analysis and documentation provided by a qualified person, the disclosure would be associated with the incremental benefits potentially stemming from the qualified person requirement, as discussed above. Third, the staff currently requests that registrants obtain a full feasibility study to support the determination of mineral reserves, but the proposed rules would allow, under certain conditions, the use of a pre-feasibility study, thus reducing compliance costs relative to current practice. This benefit is likely to be more significant for smaller, capital-constrained registrants since the cost of feasibility studies is positively related to the size of individual projects rather than the size of the registrant.

Pre-feasibility studies, while adequate for disclosure of mineral reserves, require less time than feasibility studies. For example, one study estimates that between 12% and 15% of the engineering work on a project is completed by the end of the pre-feasibility study compared to between 18% and 25% at the end of the feasibility study.[468] Thus, assuming the same cost per worker-hour, a pre-feasibility study will be around 33–40% less costly than a feasibility study. Allowing pre-feasibility studies would be especially beneficial for registrants that already have studies meeting the pre-feasibility standard, but not the feasibility standard.

In addition to compliance cost savings, allowing the use of pre-feasibility studies could provide several ancillary benefits for registrants and investors. Because CRIRSCO-based disclosure codes already allow the use of pre-feasibility studies, allowing their use under the proposed rules would place U.S. and non-Canadian foreign registrants on equal footing with Canadian registrants availing themselves of the "foreign or state law" exception and other mining companies reporting only in CRIRSCO jurisdictions. Finally, the proposed detailed requirements for feasibility studies should reduce compliance uncertainty, while increasing consistency in disclosures where feasibility studies are used to determine mineral reserves.

Because the proposed treatment of mineral reserves is consistent with established best practices in the mining industry, we do not expect a significant increase in compliance costs beyond the potential cost increases related to the qualified person requirement and the filing of the technical report summary, as discussed above. Given the potentially large compliance cost savings associated with allowing pre-feasibility studies, we expect most registrants to experience an overall reduction in compliance costs. However, because a pre-feasibility study is typically associated with a lower confidence level than a feasibility study, allowing the use of pre-feasibility studies would likely lead to higher uncertainty associated with the mineral reserve disclosures. This increased uncertainty should be mitigated by the proposed qualified person requirement and proposed requirement of a final feasibility study in certain specified high risk situations.

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[463] A scoping study (called a preliminary economic analysis in NI 43–101) is used to determine whether to proceed with further work leading to preparing a pre-feasibility or feasibility study for mineral reserve determination. In contrast to our proposed rules, CRIRSCO-based codes allow registrants to disclose results of scoping studies that use some inferred mineral resources in the economic and technical assessment.

[464] *See* note 155, *supra*.

[465] *See* Ron Bird, Matthew Grosse, and Danny Yeung (2013), pp. 123–125.

[466] *See, e.g.*, CRIRSCO's International Reporting Template pt. 21, which states "[t]he term 'reasonable prospects for eventual economic extraction' implies a judgment (albeit preliminary) by the Competent Person in respect of the technical and economic factors likely to influence the prospect of economic extraction, including the approximate mining parameters."

[467] *See* section II.F, *supra*.

[468] See Richard L. Bullock, "Mineral Property Feasibility Studies," in 1 *SME Mining Engineering Handbook*, *supra* note115, at 227–261.

One reasonable alternative to the proposed rules would be to require feasibility studies by a qualified person and not allow pre-feasibility studies. This alternative could lead to less uncertainty surrounding mineral reserve estimates but would be associated with significantly higher compliance costs than the proposed revisions. Moreover, this alternative would continue to place U.S. and non-Canadian registrants at a competitive disadvantage.

6. The Pricing Model for Determination of Mineral Resources and Reserves

As discussed above, Guide 7 does not include a specific pricing model for the estimation of mineral reserves. Currently, registrants generally use a commodity price that is no higher than the trailing 3-year average price. The proposed disclosure requirements for mineral resources and mineral reserves would require registrants to use in their reserve and resource estimations a commodity price that is no higher than the average closing price during the 24-month period prior to the end of the last fiscal year, with the exception that registrants can use a higher price if set by contractual arrangements.

A key consideration when deciding on a pricing model is that a price is assigned to mineral material that is in the ground and likely will not be extracted for many years. Ideally, our rules would use a pricing model that could accurately predict what prices will be at the time of future expected extraction. Given that commodity prices are volatile and generally difficult to predict, there is no established industry "best practice" model. Absent an established industry standard for the pricing model, we believe that, for the purpose of public disclosure, the pricing model should be transparent and cost effective, while producing unbiased estimates of future prices and promoting comparability of estimated resources and reserves across registrants. At the same time, given the inherent difficulty of forecasting future commodity prices and the segmented nature of the markets for some of the minerals involved, we also believe that the pricing model should provide registrants with some flexibility to draw on their knowledge and experience. However, we recognize that allowing firms to use their internal pricing models may hurt comparability and may create incentives to use unrealistically high prices that result in overestimated mineral resources and reserves.

A ceiling price model based on a trailing average, like the 3-year trailing average price used as a ceiling in the current staff guidance, strikes a balance between the objectives outlined above. First, the ceiling price itself is transparent, easy to calculate, and consistent for any given commodity and time, thus promoting comparability across registrants. Second, because the trailing average price is a ceiling, it gives registrants some flexibility to use their own preferred pricing model as long as it does not exceed the ceiling. Third, any tendency by registrants to select overly optimistic prices in an attempt to inflate estimates is mitigated by the ceiling price, which prevents registrants from assigning a price that is greater than what has been observed over the time period of the trailing average.

We believe that the proposed rules, which use a shorter time to calculate the historic average price than current practice, would result in a ceiling price that is more sensitive to shifts in price trends and therefore would be more relevant for estimating the inherent value of mineral resources and reserves. We also believe that the 24-month time period is preferable to using a shorter time period. An average price determined over, for example, a one-year period could be affected by short-term price volatility in such a way that the value of the estimated resources and reserves could reflect more short-term market conditions than long-term fundamental market factors. The proposed 24-month period intends to strike a balance between the ceiling price being sensitive to recent changes in fundamental market conditions while avoiding introducing fluctuations in the ceiling price that may be driven more by short-term price volatility than by changes in fundamental market conditions.[469]

In practice, if the price that many mining registrants currently use to estimate resources and reserves is at or below the 24-month average closing price, the proposed rules would not significantly impact compliance costs for these registrants.[470] To the extent that the price that management is using is above the 24-month average, however, there would be a potential significant cost to registrants to recalculate mineral resource and reserve estimates in compliance with the proposed rules.[471]

We recognize that because the proposed ceiling price model is a trailing average of historical prices, the ceiling price by design may be slow to incorporate recent price trends. Thus, to the extent that a recent significant trend in prices marks a true structural break towards higher (lower) commodity prices on the long run, the proposed ceiling price may result in underestimation (overestimation) of mineral reserves and resources. It is worth noting that, to mitigate the risk that the ceiling price does not appropriately reflect recent changes in the fundamental market conditions, the proposed rules would allow registrants that have contracts with prices that are higher than the ceiling to use such prices. Moreover, the proposed rules would require disclosure of the assumptions used in the economic analysis underlying the estimates of mineral resources and reserves, including the price chosen, if the registrant has not previously disclosed mineral reserve or resource estimates in a filing with the Commission or is disclosing material changes to its previously disclosed mineral reserve or resource estimates.[472] The overall economic effects of the proposed pricing model are particularly difficult to quantify, and we request comment on these effects.

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[469] To illustrate the differences in the volatility depending on the time horizon used for the ceiling price, staff analysis shows that for copper prices on the London Metal Exchange over the 1986–2015 time period, the standard deviation of the percentage change in year-over-year prices was 16.6%, 20.0%, and 25.9% for average prices calculated based on horizons of 36 months, 24 months, and 12 months, respectively. This can be compared to the standard deviation of the year-over-year change in daily prices, which was 34.1%. A qualitatively similar pattern was found for a wide variety of different minerals. (Note that for these calculations, end of the month prices were used to calculate the year-over-year changes for each of the different price alternatives, which means that the standard deviations are based on 360 observations of year-to-year percentage changes for each time horizon). The data used for the analysis was collected from Thomson Reuters Markets LLC's DataStream database.

[470] The only costs would be to calculate the 24 month average price and determine whether the price that management currently uses to estimate its mineral resources and reserves is below that price.

[471] These costs would vary significantly depending on the facts and circumstances, including the type of deposit, mining methods, and magnitude of price change. In some instances, a price change may require very little additional engineering and economic analysis to determine the economic viability of the mineral resources in question. In other instances, a price change may lead to a significant change in the scale of the proposed mining project. The qualified person would then have to repeat almost all the engineering and economic analysis to determine mineral resources.

There are several reasonable alternatives to the proposed pricing model. One alternative would be the approach followed by several foreign jurisdictions with CRIRSCO-based codes, where the qualified person is allowed to use any reasonable and justifiable price based on that qualified person's or management's view of long-term market trends.[473] Compared to the proposed price ceiling model, this alternative approach would reduce the risk of underestimation of mineral reserves and resources following a fundamental upward shift in the commodity price, but would also carry a higher risk of overestimation. A modified version of this alternative would be to require registrants also to provide a sensitivity analysis of the estimates of mineral resources and reserves with respect to the commodity price used, where the price points used in the sensitivity analysis surrounding the base price would be selected by the registrant. A sensitivity analysis with respect to price would help investors better assess the risk associated with the estimated mineral resources and reserves and could, therefore, lead to more efficient investment decisions. However, because a sensitivity analysis would require registrants to calculate at least three estimates of resources and reserves (the base price, as well as one price each above and below the base price, respectively), compliance costs would be increased. These compliance costs would be mitigated to the extent that registrants are able to use estimates based on existing calculations from an internal sensitivity analysis.

A second alternative would be to calculate the ceiling price differently, for example, as spot, forward, or futures price as of the end of the last fiscal year to incorporate more quickly shifts in price trends. However, due to the volatility associated with prices from any given specific day, the disclosed estimates of mineral resources and reserves may fluctuate more than the underlying fundamental values of the resources and reserves, thus increasing the uncertainty of the estimates for investors. Moreover, to the extent the ceiling price calculated using this alternative is below the price that registrants use based upon their own internal calculations, the higher volatility of this alternative ceiling price may create higher compliance costs as registrants may have to provide more frequent recalculations of their mineral resources and reserves, solely for the purpose of their SEC filings.

A third alternative would be to require registrants to estimate mineral resources and reserves using a price no higher than the 24-month trailing average price and allow registrants to also disclose mineral resources and reserves based on a higher price of their own choosing, to the extent that they include a description of the model and assumptions used to select the price.[474] This approach would present standardized estimates that are transparent and comparable across registrants, while letting managers present supplement estimates based on an alternative price if they, for example, believe that the 24-month average may lead to inaccurate estimates. Because reporting a second set of estimates based on prices higher than the ceiling price would be voluntary, presumably registrants only would provide such alternative estimates if they expect the benefits of doing so to outweigh the costs. The potential cost of this alternative is that the price ceiling mechanism would lose its ability to constrain disclosure of overestimated mineral resources and mineral reserves due to the use of overly optimistic prices, which is one of the objectives for the price model discussed above.

7. Specific Disclosure Requirements

i. Requirements for Summary Disclosure

Currently, Guide 7 does not explicitly address what disclosure should be provided when a registrant has multiple mining properties. Instead, on a filing-by-filing basis, staff has not objected to a registrant with multiple mining properties providing summary disclosure that encompasses all of its properties instead of providing disclosure on a property by property basis. The proposed rules would require that registrants that own multiple mining properties provide summary disclosure of their mining operations. The summary disclosure would include maps of the locations of all mining properties, a tabular presentation of certain material information about the 20 properties with the largest asset values, and a summary of all mineral resources and reserves at the end of the most recently completed fiscal year.[475]

We expect that the proposed summary disclosure would help registrants to convey more effectively to investors information about their aggregate mining properties and operations. Because of the clarity and detail in the proposed summary requirement, it should also reduce compliance uncertainty and increase consistency of summary disclosures across registrants. These benefits should be particularly important for registrants with a diverse set of mining properties.[476]

Given that the proposed requirement for summary disclosure would align with what most registrants already provide in their SEC filings, we do not expect the requirement to impose significant additional costs on registrants with mining operations that are material in the aggregate, but have no individual property that is material. We also note that one CRIRSCO-based jurisdiction, Australia, through the ASX listing rules, requires summary disclosure similar to the proposed summary disclosure requirements.[477] For registrants that do not already provide summary disclosure, whether reporting pursuant to Guide 7 or under any of the CRIRSCO-based codes, other than the ASX listing rules, there could be additional costs to comply with the summary disclosure requirements in addition to any individual property disclosure requirements.

One alternative to the proposed summary disclosure would be to limit the disclosure required by proposed Item 1303(b)(3) to only the mineral resources and reserves for the 20 largest properties, rather than for all mining operations. This would reduce compliance costs for registrants with greater than 20 mining properties. The cost of this alternative would be a potentially significant reduction in the information about mineral resources and reserves available to investors by excluding such information for many properties, which could be a significant portion or majority of the registrant's mineral resources and reserves. This reduction in information would be particularly significant for registrants with multiple properties where no individual property is material.

Another alternative would be to require summary information about the mining operations in aggregate but not for any individual property. Compared to the proposed requirements, this alternative would lower not only compliance costs but also the amount of information available to investors, especially when the registrant has material mining operations in aggregate but no individual mining property that is material.

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[472] *See* proposed Item 1304(b)(9) of Regulation S–K.

[473] *See* note 196, *supra*.

[474] As currently proposed, a registrant would not be permitted to provide a supplemental mineral reserve determination (*i.e.*, estimate based upon prices higher than the 24 month trailing average). *See* note 252, supra.

[475] *See* the discussion in Section II.G.1., *supra*.

[476] *See* section II.B. 2, *supra*.

[477] *See* ASX Listing Rules 5.1.2 and 5.3.2.

The required summary disclosures would increase the accessibility of the information to investors and other data users. The proposed tabular formats (Tables 2 and 3), however, may not be readily machine-readable or directly comparable across filers without additional structure. An alternative to the proposed summary requirements would be also to require the disclosure required in Tables 2 and 3 to be made available in a structured data format, such as eXtensible Business Reporting Language (XBRL). When registrants provide disclosure items in a structured data format, investors and other data users (*e.g.*, analysts) can more easily retrieve and use the information reported by registrants and perform comparisons of common disclosures across registrants and reporting periods.[478] Investors can download information directly into spreadsheets or statistical analysis software, which eliminates the need to enter the information manually and minimizes the time burden and risk of errors associated with data entry. The structuring of the data would require the development of a taxonomy (a standard list of tags necessary for reporting in XBRL), which in turn would require some level of standardization of the various data elements based on mining industry practices. To the extent that the proposed rules permit tailoring of the disclosures in Tables 2 and 3 to registrants' unique circumstances and provide filers with the flexibility in how to report the required information, the comparability of the data across registrants would be decreased, which in turn would decrease the usefulness of requiring the data in Tables 2 and 3 to be made available in the XBRL format.

A company may choose to tag its own disclosures in-house or to outsource the tagging process. Whether structured data filings are prepared in-house or by an outside service provider, registrants would incur additional costs to make the disclosure available in a structured data format, including initial set-up costs and ongoing costs. To the extent that such costs have a fixed component, they could impose a relatively greater burden on smaller registrants.

ii. Requirements for Individual Property Disclosure

As discussed above, the proposed requirements for individual property disclosure for material properties would standardize the current policies and requirements in Guide 7, Item 102 of Regulation S–K, and Form 20–F, including a requirement that registrants present most of the disclosure in tabular format. The proposed requirements would also increase the amount and type of individual property information that registrants disclose. Much of this new information would be a direct consequence of the proposed new requirements to disclose material exploration results and mineral resources. Another new item of information would be the required comparison of a registrant's mineral resources and reserves as of the end of the last fiscal year against the mineral resources and reserves as of the end of the preceding fiscal year, with an explanation of any change between the two.

The standardizations of the proposed format for disclosures relative to the current disclosure regime should increase the effectiveness of the information conveyed to investors. The comparative year-to-year disclosure requirement should also help investors better understand the risk and prospects of the registrants' mining operations.

We expect that the tabular format of some of the individual property requirements could initially result in additional compliance costs. However, we expect that ultimately the costs for the disclosure of a registrant's mineral resources, mineral reserves and material exploration results may decline over time because companies should only have to incur the costs to update their systems and procedures to collect and structure the required information once, and thereafter will only have to update the reported information. The remainder of the individual property disclosure requirements should not increase costs to registrants since they are substantially similar to those currently provided under the existing disclosure regime.[479]

Similar to the above discussed requirement for summary disclosure, an alternative to the proposed requirements for individual property disclosure would be to require the disclosures in Tables 4 to 8 to be made available in XBRL format. This alternative would have the same potential benefits and costs as those discussed above in Section IV.B.7.i.

iii. Requirements for Technical Report Summaries

We expect that the proposed technical report summary requirement would have the largest impact on registrants' compliance costs since currently only registrants from Canada and Australia are subject to a similar requirement.[480] The proposed requirements for the technical report summaries are largely consistent with the items of information required under the Canadian NI 43–101 standards, with some relevant differences. One important difference is that NI 43–101 allows the qualified person to include a disclaimer of responsibility if he or she relies on a report, opinion, or statement of another expert who is not a qualified person in preparing the technical report summary, while the proposed requirement would not allow such a disclaimer. The potential benefit of not allowing such a disclaimer is that it would give the qualified person, as a consenting expert, greater incentive to verify information included in the technical report that is provided by others. However, the resulting increase in legal liability could also raise the cost of hiring a qualified person.[481]

iv. Requirements for Internal Controls Disclosure

The proposed requirement that a registrant describe the internal controls that it uses in the disclosure of its exploration results and in its estimates of mineral resources and mineral reserves would align the Commission's disclosure regime with the requirements of the CRIRSCO-based codes. Current rules and guidance do not address internal controls. Commission staff has, on a case-by-case basis when warranted by the specific facts and circumstances, requested a brief description of the quality control and quality assurance protocols used for exploration plans.

We expect disclosure of the internal controls that a registrant uses to improve significantly investors' understanding of the risks related to the quality and reliability of a registrant's disclosure of exploration results and estimates of mineral resources and mineral reserves, and therefore also lead to more efficient investment decisions. We also expect the requirement to increase compliance costs for registrants. Registrants already disclosing internal controls in CRIRSCO jurisdictions or voluntarily providing such disclosures in their SEC filings should be largely unaffected by the proposed requirements.

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[478] *See* Release No. 33–9002A (Apr. 1, 2009) [74 FR 15666] ("Financial Statement Information Adopting Release").

[479] The costs we consider in this subsection are only the costs related to the format of the individual property disclosure requirements, as costs related to the proposed expansion of information required to be disclosed are discussed in preceding sections.

[480] We estimate that 113 out of the 345 existing mining registrants are currently also reporting in Canada or Australia.

[481] As discussed in Section II.F.3 above, other differences from NI 43–101 in the proposed requirement concern the structure of how certain types of information are presented, which we believe would enhance the presentation of the information without any significant impact on compliance costs relative to NI 43–101.

8. Conforming Changes to Certain Forms Not Subject to Regulation S–K

i. Form 20–F

The proposed conforming changes to Form 20–F are intended to ensure consistency in the mining disclosures across both domestic registrants and foreign private issuers (excluding Canadian 40–F filers). The proposed changes would particularly affect Canadian registrants that report pursuant to Form 20–F and are currently permitted to provide additional mining disclosure under NI 43–101 pursuant to the "foreign or state law" exception under Guide 7 and the "foreign law" exception under Form 20–F. The proposed rules would eliminate this exception and may thus increase compliance costs for these registrants to the extent that, as discussed previously, the proposed disclosure requirements differ from NI 43–101.[482] That said, to the extent that these differences in disclosure requirements also provide expected incremental benefits, these benefits would mitigate any increase in compliance costs.

ii. Form 1–A

The proposed conforming changes to Form 1–A would subject Regulation A issuers with material mining operations to the full mining disclosure requirements in the proposed subpart 1300 of Regulation S–K. Thus, these issuers may incur the benefits and costs of these requirements, as previously discussed. Because Regulation A issuers are typically smaller companies, the economic considerations discussed above about smaller companies would apply to this group of issuers. In general, we expect that the proposed rules would benefit Regulation A issuers given that smaller companies typically suffer a higher degree of information asymmetry between the company and investors, which may increase capital costs and lower access to financing. Nevertheless, the expected increase in compliance costs from the proposed mining disclosures requirements may be of particular importance for mining issuers that are likely to consider Regulation A offerings. Under the proposed requirements, mining issuers would be able to avoid the costs associated with the prescribed technical reports by forgoing disclosure of exploration results, mineral resources, and reserves, as defined, which would mitigate any negative effect of increased compliance costs on the propensity to use a Regulation A offering. Mining issuers may also be able to avoid costs by choosing to offer securities under other exemptions under the Securities Act, such as Regulation D. However, this may put such issuers at a competitive disadvantage relative to their peers who are raising capital with the benefit of these disclosures.

One alternative to the proposed conforming changes to Form 1–A would be to require the proposed mining disclosures for Tier 2 offerings only. Because Tier 2 offerings may be larger than Tier 1 offerings, the relative importance of fixed compliance costs could be lower for Tier 2 issuers, and thus the net benefit to Tier 2 issuers from the disclosure requirements could potentially be larger. Another alternative we considered would be to require disclosure only of the information in the proposed summary disclosure requirement discussed in Section II.F, including for issuers that only own one material mining property. This would lower compliance costs, but would also reduce the information to investors about material mining properties.

9. Compliance Costs of Preparing and Filing Forms

The most significant compliance costs associated with the proposed rules for mining disclosure would likely be the costs associated with engaging qualified persons and the technical analyses and reports they prepare. Registrants would also incur direct compliance costs from the proposed rules related to preparing and incorporating the required information in relevant Commission forms. For purposes of the Paperwork Reduction Act, we analyze these costs in more detail in Section V, but for the average firm, we expect an increase of 44.64 internal company burden hours and an increase of costs for outside professionals equal to $11,975.[483] As we discuss in Section V, we expect the incremental company burden hours and professional costs would be lower than these estimates for registrants subject to CRIRSCO-based codes and larger for registrants not subject to such codes. Moreover, the incremental burden and costs would likely vary with the size and complexity of the registrant's mining operations.

C. Anticipated Impact on Efficiency, Competition, and Capital Formation

We expect the proposed disclosure requirements to increase the amount and quality of disclosed information about registrants' mining operations, and thereby to have a positive effect on efficiency and capital formation. For example, the proposed rules would require registrants with material mining operations to disclose determined mineral reserves, mineral resources and material exploration results. These proposed requirements would better align the Commission's disclosure requirements with the current practices used by mining companies to evaluate their projects, thereby reducing information asymmetries between registrants and investors about the prospects of mining operations. In addition, the qualified person requirement, together with detailed requirements for the supporting technical studies, should generate higher quality and more consistent disclosures, which should reduce any uncertainty surrounding the disclosures. In turn, reduced information asymmetries and reduced uncertainty about the disclosures would help investors achieve a more efficient capital allocation, while reducing the cost of capital and enhancing capital formation for registrants.[484]

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[482] Although the disclosure requirements of the proposed rules are similar to those in NI 43–101, there are some differences that may impose additional costs. For example, the requirements in the proposed rules concerning how to determine prices for mineral reserve estimates are different from those in NI 43–101. In addition, the proposed rules require that the qualified person conduct a preliminary evaluation of the relevant modifying factors to establish the prospects of economic extraction in estimating resources, which NI 43–101 does not.

[483] The average increase in internal burden hours and outside professional costs are calculated using the estimates of total incremental company burden hours (15,400) and total incremental professional costs ($4,131,200), as reported in Table 2 of Section V.D, *supra*, and dividing them by the estimated number of total annual responses (345).

[484] The significant risk and negative impact on capital formation from uncertainty surrounding mining disclosure is illustrated by the evidence in William O. Brown, Jr. and Richard C.K. Burdekin, "Fraud and Financial Markets: The 1997 Collapse of the Junior mining Stocks" (2000), Journal of Economics and Business, Volume 52, Issue 3, pp. 277–288. The authors utilize event study methodology to analyze the effect on Canadian mining companies' stock returns around the revelations in spring 1997 of fraudulent disclosures of gold resources by the Canadian mining company Bre-X. The study documents that a portfolio of 59 Canadian gold mining stocks experienced significantly negative abnormal stock returns around the Bre-X fraud revelations. Similarly, the Vancouver Composite Index, which at the time was dominated by natural resource companies, also experienced significantly negative abnormal returns

In particular, we believe that the proposed requirements for disclosure of material exploration results and mineral resources would reduce information asymmetries and uncertainty for smaller mining registrants, as these registrants tend to have mining properties in earlier stages of development with relatively fewer reported mineral reserves. As a result, we expect the anticipated positive effects on efficiency and capital formation to be relatively larger for smaller registrants. However, these effects would only materialize to the extent smaller registrants make the required investment in the studies that are required to support disclosure in the first place. We anticipate that there likely are some smaller registrants who do not have access to the liquid funds needed to make that investment.

Although we expect the overall amount of disclosed information to increase under the proposed rules, there may be exceptions. As discussed previously, we expect that the proposed disclosure requirements would increase the compliance costs for disclosure of material exploration results and the currently allowed (on a case-by-case basis) equivalent of mineral resources (*i.e.*, mineralized material). Therefore, despite the anticipated benefits from the proposed disclosure requirements, some registrants may find that these benefits do not outweigh the compliance costs and reduce what they disclose currently.

The positive effects we expect on efficiency and capital formation from the proposed rules would be lower for the registrants that currently report in foreign jurisdictions with CRIRSCO-based disclosure codes. These registrants to a large degree already provide the proposed disclosures. This is particularly the case for Canadian registrants, who disclose the information pursuant to NI 43–101 standards in their Forms 20–F under the "foreign or state law" exception.

We expect the proposed rules to have some competitive effects. For example, there may be reallocation of capital as registrants that previously could not disclose mineral resources or could not afford the feasibility studies required for disclosure of mineral reserves (but could afford pre-feasibility studies) may start to disclose a broader range of their business prospects, making it easier for these registrants to raise capital and compete with the mining companies that already report material mineral resources and reserves. We also anticipate that by aligning our disclosure requirements with the CRIRSCO-based codes, the proposed rules would improve the competitiveness of U.S. securities markets and increase the likelihood of prospective registrants listing their securities in the United States, while decreasing the likelihood that current registrants would exit U.S. markets.[485] In particular the qualified person requirement and associated requirements for the supporting technical studies may improve the global competitiveness of U.S. registrants because such quality assurances have become internationally recognized practice and may help signal to market participants that U.S. registrants are able to meet the standards codified by the proposed rules.

D. Request for Comment

We request comment on the costs and benefits described throughout this release. We seek estimates of these costs and benefits, as well as any costs and benefits not already identified, that may result from the adoption of the proposed rules. We also request qualitative feedback on the nature of the economic effects, including the benefits and costs, we have identified and any benefits and costs we may have overlooked. We request comment from the point of view of registrants, investors, mining professionals such as geologists and engineers, and other market participants. We further seek information that would help us quantify or otherwise qualitatively assess the impact of the proposed rules on efficiency, competition, and capital formation. In addition, we seek information on how any impact on efficiency, competition, and capital formation would vary with company size.

In particular, we request comment on the following:

124. We seek comment and data on the magnitude of the costs and benefits identified as well as any other costs and benefits that may result from the adoption of the proposed rules. In addition, we are interested in views regarding these costs and benefits for particular types of covered registrants, such as smaller registrants or registrants currently reporting according to CRIRSCO-based disclosure codes.

125. We seek information that would help us quantify compliance costs. In particular, we invite comment from registrants or other mining companies that have had experience reporting under any of the CRIRSCO-based disclosure codes. For example, what are the costs associated with the qualified person requirement? If reporting in Canada or Australia, what are the costs associated with producing and filing the technical report summaries?

126. We invite comment on the structure of compliance costs. In particular, to what extent are the compliance costs fixed versus variable? Are there scale advantages or disadvantages in the compliance costs, both in terms of project size or company size?

127. Are our estimates of the difference in costs of a pre-feasibility study relative to a feasibility study reasonable? If not, what would be more reasonable estimates of the difference in costs?

128. We also seek comment on the alternatives to the proposed rules discussed in this section, and to the costs and benefits of each alternative. Are there any other alternatives that we should consider in lieu of the proposed rules? If so, what are those alternatives and what are their expected costs and benefits?

129. We are interested in comments and data related to any potential competitive effects from the proposed rules. In particular, we are interested in evidence and views on the current global competitive situation of U.S. mining registrants as well as the attractiveness of U.S. securities markets for foreign mining companies. To what extent does the current mining disclosure regime affect this competitive situation, if at all? Would the proposed rules improve the global competitiveness of U.S. mining registrants and securities markets? If so, how?

V. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the Paperwork Reduction

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for the same event time period. We note that the Bre-X fraud contributed to the development of the Canadian NI 43–101 mining disclosure standards.

[485] There could be an opposite effect in some cases. Among foreign private issuers, the registrants not currently reporting in foreign jurisdictions based on CRIRSCO standards are most likely to experience an increase in compliance costs. If these compliance costs become too burdensome, some of these foreign private issuers may choose to withdraw from U.S. securities markets. The impact of such a potential outcome is limited, however, as we have only identified seven (as of December 2015) foreign private issuers that are not subject to CRIRSCO reporting standards. Moreover, a company that did not want to comply with these or similar disclosure standards would only have a limited number of alternative jurisdictions to list, none of whose markets are as developed or robust as the U.S. or other financial markets that have such standards.

Act of 1995 ("PRA").[486] The Commission is submitting the proposed rules to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[487] The titles for the collections of information are:

- "Regulation S–K" (OMB Control No. 3235–007);[488]
- "Form S–1" (OMB Control No. 3235–0065);
- "Form S–4" (OMB Control Number 3235–0324);
- "Form F–1" (OMB Control Number 3235–0258);
- "Form F–4" (OMB Control Number 3235–0325);
- "Form 10" (OMB Control No. 3235–0064);
- "Form 10–K" (OMB Control No. 3235–0063);
- "Form 20–F" (OMB Control No. 3235–0063); and
- Regulation A (Form 1–A) (OMB Control Number 3235–0286).

We adopted Regulation S–K and these forms pursuant to the Securities Act or the Exchange Act. Regulation S–K and the forms, other than Form 1–A, set forth the disclosure requirements for annual reports and registration statements that are prepared by registrants to provide investors with the information they need to make informed investment decisions in registered offerings and in secondary market transactions. We adopted Regulation A to provide an exemption from registration under the Securities Act for offerings that satisfy certain conditions, such as filing an offering statement with the Commission on Form 1–A, limiting the dollar amount of the offering and, in certain instances, filing ongoing reports with the Commission.

The hours and costs associated with preparing and filing the forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. Compliance with the proposed rules would be mandatory. Responses to the information collections would not be kept confidential, and there would be no mandatory retention period for the information disclosed.

B. Summary of Collection of Information Requirements

The proposed rules would require a registrant with material mining operations to disclose its determined mineral resources, mineral reserves and material exploration results in Securities Act registration statements filed on Forms S–1, S–4, F–1 and F–4, in Exchange Act registration statements on Forms 10 and 20–F, in Exchange Act annual reports on Forms 10–K and 20–F,[489] and in Regulation A offering statements filed on Form 1–A. The proposed rules would further require that such a registrant base its disclosure regarding mineral resources, mineral reserves and material exploration results in SEC filings on information and supporting documentation by a qualified person. In addition, the proposed rules would require a registrant with material mining operations to file as an exhibit to its Securities Act registration statement, Exchange Act registration statement or report, or its Form 1–A offering statement, a technical report summary prepared by the qualified person for each material property that summarizes the information and supporting documentation forming the basis of the registrant's disclosure in the SEC form. The proposed rules would require the filing of the technical report summary when the registrant first reports mineral resources, mineral reserves or material exploration results or when it reports a material change in a prior disclosure of resources, reserves or exploration results.

The Commission's existing disclosure regime for mining registrants precludes the disclosure of non-reserves, such as mineral resources, unless such disclosure is required by foreign or state law.[490] In addition, the existing regime permits, but does not require, the disclosure of material exploration results. The existing regime also does not currently require a registrant to base its mining disclosure on information and supporting documentation of a qualified person.

Accordingly, we expect the proposed rules would cause an increase in the reporting and cost burdens for each collection of information. The additional requirements imposed by the proposed rules would, however, be similar to requirements under foreign (CRIRSCO-based) mining codes. As such, we expect the increase in reporting and cost burdens to be less for those registrants that are already subject to the CRIRSCO standards. Nevertheless, because there are differences between the proposed rules' requirements and those under the CRIRSCO-based codes, we expect there would be some increase in reporting and cost burdens even for those registrants already subject to foreign mining code requirements.[491]

C. Estimate of Potentially Affected Registrants

We estimate the number of registrants potentially affected by the proposed rules to be 345.[492] Of these registrants, we estimate that 129 are already subject to the disclosure requirements under one or more CRIRSCO-based codes and, therefore, likely would incur a lesser increase in reporting and cost burdens to comply with the proposed rules' requirements.[493] Accordingly, we estimate that 216 registrants would bear the full paperwork burden of the proposed rules.

The following table summarizes the number of potentially affected registrants by the particular form expected to be filed and whether the registrant is subject to CRIRSCO-based code requirements in addition to the proposed rules.

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[486] 44 U.S.C. 3501 *et seq.*

[487] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[488] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the requirements in that regulation and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation S–K.

[489] Form 20–F is the form used by a foreign private issuer to file either a registration statement or annual report under the Exchange Act. Because the proposed rule amendments would impose the same substantive requirements for a registration statement and annual report filed under Form 20–F, we have not separately allocated the estimated reporting and cost burdens for a Form 20–F registration statement and Form 20–F annual report.

[490] Because only Canada has adopted its mining code as a matter of law, the disclosure of non-reserves in SEC filings has been limited to Canadian registrants.

[491] For example, unlike the CRIRSCO-based codes, the proposed rules would require a particular type of technical study, an "initial assessment," to support the disclosure of mineral resources in SEC filings. *See* section II.E.3, *supra*.

[492] We have based this estimate on the number of registrants with mining operations that filed the above described Securities Act and Exchange Act forms from January 2014 through December 2015.

[493] Most of these registrants are subject to the disclosure requirements in Canada's NI 43–101.

PRA TABLE 1—ESTIMATED NUMBER OF AFFECTED REGISTRANTS PER FORM

Form	S–1	S–4	F–1	F–4	10	10–K	20–F	1–A	All Forms
# Affected Registrants Subject to CRIRSCO Requirements	7	3	1	1	0	46	70	1	129
# Affected Registrants Not Subject to CRIRSCO Requirements	29	6	0	0	5	169	7	0	216
Total # Affected Registrants	36	9	1	1	5	215	77	1	345

D. Estimate of Reporting and Cost Burdens

We have estimated the reporting and cost burdens of the proposed rules by estimating the average number of hours it would take a registrant to prepare, review and file the disclosure required by the proposed rules for each collection of information. In deriving our estimates, we recognize that the burdens would likely vary among individual registrants based on a number of factors, including the size and complexity of their mining operations. The estimates represent the average burden for all registrants, both large and small.

We believe that the resulting increase in reporting and cost burdens would be substantially the same for each collection of information since the proposed rules would require substantially the same disclosure for a Securities Act registration statement or Regulation A offering statement as they would for an Exchange Act registration statement or report. The sole difference between the proposed rules' effect on Securities Act registrants and Form 1–A issuers, on the one hand, and Exchange Act registrants, on the other, is that a Securities Act registrant and a Regulation A issuer would be required to obtain and file as an exhibit the written consent of each qualified person whose information and supporting documentation as an expert provide the basis for the disclosure required under the amendments.[494] To account for this difference, we have allocated one extra hour to the reporting burdens estimated for the Securities Act registration statement forms and Regulation A's Form 1–A.

We estimate that the proposed rules would cause a registrant that is not already subject to CRIRSCO requirements to incur an increase of 96 hours in the reporting burden for each Securities Act registration statement (Forms S–1, S–4, F–1, and F–4), and an increase of 95 hours in the reporting burden for each Exchange Act registration statement or annual report (Forms 10, 10–K and 20–F.) For a registrant that is subject to the CRIRSCO requirements, we estimate that the proposed rules would cause an increase of 41 hours in the reporting burden for Securities Act registration statements and Form 1–A offering statements, and an increase of 40 hours in the reporting burden for Exchange Act registration statements and annual reports.

We have based our estimated burden hours and costs under the proposed rules on an assessment by the Commission's staff mining engineers of the work required to prepare the required information for disclosure. In particular, our estimates have been based on the staff engineers' assessment of similar reporting requirements under CRIRSCO standards (especially Canada's NI 43–101 and Australia's JORC).[495] The engineers' estimates of time and costs for NI 43–101 and JORC reporting were adjusted for the differences between the proposed rules and those standards.

The following tables summarize, respectively, the estimated incremental and total reporting costs and burdens resulting from the proposed rules. When determining these estimates, for all forms other than Form 10–K and Form 1–A, we have assumed that 25% of the burden of preparation is carried by the registrant internally and 75% of the burden of preparation is carried by outside professionals retained by the registrant at an average cost of $400 per hour.[496] For Form 10–K and Form 1–A, we have assumed that 75% of the burden of preparation is carried by the registrant internally and 25% of the burden of preparation is carried by outside professionals at an average cost of $400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the registrant internally is reflected in hours.

We have determined the estimated total incremental registrant burden hours for each form under the proposed rules by first determining the hour burden per registrant response estimated as a weighted average of the burden hours of registrants subject to and those not subject to the CRIRSCO requirements.[497] We then multiplied this average burden hour per response by the total number of responses for each form estimated to occur annually. We similarly estimated the incremental professional costs for each form under the proposed rules by first estimating the incremental professional costs as a weighted average of the incremental professional costs estimated to be incurred by registrants subject and not subject to the CRIRSCO requirements. We then multiplied the average incremental professional costs by the total number of annual responses estimated to occur for each form.[498]

Based on these calculations, as set forth below, we estimate that the total number of incremental burden hours for all forms resulting from complying with the proposed rules is 15,400 burden hours. We further estimate that the resulting total incremental professional costs for all forms under the proposed rules is $4,131,200.[499]

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[494] A Securities Act registrant must file the written consent of an expert upon which it has relied pursuant to Securities Act Rule 436 (17 CFR 230.436). A Regulation A issuer's obligation to file the written consent of an expert is based on Item 17(11)(a) of Form 1–A.

[495] These estimates include the burden associated with preparing a technical report summary to support the disclosure of mineral resources, mineral reserves and material exploration results. For purposes of this PRA analysis, we estimate that registrants subject to the CRIRSCO standards would each incur 11 hours, and registrants not subject to those standards would each incur 50 hours, to prepare the required technical report summary.

[496] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that such costs would be an average of $400 per hour. This is the rate we typically estimate for outside services used in connection with public company reporting.

[497] For example, we determined the estimated incremental burden hours for Form S–1 as follows: 41 hours × 0.25 = 10.25 internal burden hours for CRIRSCO filers; 10.25 hours × 7 = 71.75 total incremental hours for CRIRSCO filers. 96 hours × 0.25 = 24 internal burden hours for non-CRIRSCO filers; 24 hours × 29 = 696 total incremental burden hours for non-CRIRSCO filers. 71.75 hours + 696 hours = 767.75 total internal hours (or 768 hours rounded to the nearest whole number). 768 hours/36 = 21.33 avg. incremental burden hours.

[498] For example, we determined the estimated incremental professional costs for Form S–1 as follows: 41 hours × 0.75 = 30.75 outside hours for CRIRSCO filers; 30.75 hours × 7 = 215.25 total outside hours for CRIRSCO filers. 96 hours × 0.75 = 72 outside hours for non-CRIRSCO filers; 72 hours × 29 = 2088 total outside hours for non-CRIRSCO filers. 215.25 hours + 2088 hours = 2303.25 total outside hours. 2303.25 hours × $400 = $921,300 total incremental professional costs.

costs for all forms under the proposed rules is $4,131,200.[499]

PRA TABLE 2—ESTIMATED INCREMENTAL BURDEN AND COSTS UNDER THE PROPOSED RULES

	Number of annual responses (A)	Hour burden per response (B)	Total incremental registrant burden hours * (C) = (A) × (B)	Incremental professional costs (D)	Total incremental professional costs * (E) = (A) × (D)
Form S–1	36	21.33	768	$25,591.67	$921,300
Form S–4	9	19.42	175	23,300	209,700
Form F–1	1	10.25	10	12,300	12,300
Form F–4	1	10.25	10	12,300	12,300
Form 10	5	23.75	119	28,500	142,500
Form 10–K	215	62.42	13,421	8,323.26	1,789,500
Form 20–F	77	11.25	866	13,500	1,039,500
Regulation A (Form 1–A)	1	30.75	31	4,100	4,100
Total	345		15,400		4,131,200

* Rounded to nearest whole number.

We have determined the estimated total burden of complying with the proposed rules for each form by adding the above described estimated incremental company burden hours to the current burden hours estimated for each form. We have similarly determined the estimated total professional costs under the proposed rules for each form by adding the estimated total incremental professional costs to the current professional costs estimated for each form. Based on these calculations, as summarized below, we estimate that, as a result of the proposed rules, the estimated annual burden for all forms would increase to 13,753,285 hours, compared to the current annual estimate of 13,737,885 hours. We further estimate that the proposed rules would result in estimated annual professional costs for all forms of $3,329,079,082, compared to the current annual estimate of $3,324,947,882.

PRA TABLE 3—ESTIMATED TOTAL BURDEN AND COSTS UNDER THE PROPOSED RULES

	Current annual responses	Proposed annual responses	Current burden hours	Increase in burden hours	Proposed burden hours	Current professional costs	Increase in professional costs	Proposed professional costs
Form S–1	901	901	219,015	768	219,783	$262,818,096	$921,300	$263,739,396
Form S–4	619	619	634,425	175	634,600	761,310,576	209,700	761,520,276
Form F–1	63	63	28,462	10	28,472	34,154,568	12,300	34,166,868
Form F–4	68	68	24,769	10	24,779	29,722,800	12,300	29,735,100
Form 10	238	238	12,805	119	12,924	15,366,042	142,500	15,508,542
Form 10–K	8,137	8,137	12,198,095	13,421	12,211,515	1,627,400,000	1,789,500	1,629,189,500
Form 20–F	725	725	479,501	866	480,367	575,400,600	1,039,500	576,440,100
Reg. A (Form 1–A)	250	250	140,813	31	140,844	18,775,200	4,100	18,779,400
Total	11,001	11,001	13,737,885	15,400	13,753,285	3,324,947,882	4,131,200	3,329,079,082

E. Request for Comments

We request comments in order to evaluate: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of each proposed collection of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (4) whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and (5) whether the proposed rules would have any effects on any other collections of information not previously identified in this section.[500]

Any member of the public may direct to us any comments about the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE.,

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[499] The total incremental burden hours and total incremental professional costs are rounded to the nearest whole number.

[500] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

Washington, DC 20549–1090, with reference to File No. S7–10–16. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–10–16, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act ("RFA")[501] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedures Act,[502] to consider the impact of those rules on small entities. Section 603(a) of the RFA[503] generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules.

A. Reasons For, and Objectives of, the Proposed Action

The proposed rules are intended to modernize the Commission's mining disclosure requirements and policies by conforming them to current industry and global regulatory practices and standards. In so doing, the proposed rules seek to provide investors with a more comprehensive understanding of a registrant's mining operations, which should help them make more informed investment decisions. As noted above, the proposed rules would:

- provide a clear and consistent standard for when registrants with mining operations are required to provide the applicable mining disclosures;
- consolidate current mining disclosure requirements and standards and related Commission and staff guidance;
- require the disclosure of determined mineral resources and material exploration results; and
- require that a registrant's disclosure of exploration results, mineral resources or mineral reserves be based upon and fairly reflect information and supporting documentation prepared by a mining industry professional having the requisite level of expertise.

B. Legal Basis

We are proposing the rule amendments pursuant to sections 3(b), 7, 10, 19(a), and 28 of the Securities Act and sections 3(b), 12, 13, 15(d), 23(a), and 36(a) of the Exchange Act.

C. Small Entities Subject to the Proposed Rule Amendments

The proposed rules would affect small entities that have, or for which it is probable that they will have, material mining operations, and which file registration statements under Section 6 of the Securities Act or Section 12 of the Exchange Act, and reports under Section 13(a) or 15(d) of the Exchange Act. For purposes of the RFA, under our rules, an issuer, other than an investment company, is a "small business" or "small organization" if it has total assets of $5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[504] From staff review of Securities Act and Exchange Act filings made by registrants with mining operations from January 2014 through December 2015, we estimate that there are approximately 176 issuers that may be considered small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

As described in greater detail above, the proposed rules would add to the Securities Act and Exchange Act disclosure requirements of registrants, including small entities, with material mining operations by requiring:

- The disclosure of determined mineral resources and material exploration results in addition to mineral reserves;
- the disclosure of exploration results, mineral resources and mineral reserves in SEC filings to be based on and accurately reflect information and supporting documentation prepared by a qualified person; and
- the filing of a technical report summary prepared by a qualified person for each material property for certain SEC filings.

The proposed rules would also codify certain existing disclosure policies for registrants with material mining operations, including small entities. The same mining disclosure requirements would apply to both U.S. and foreign registrants.

E. Duplicative, Overlapping or Conflicting Federal Rules

As noted above, the proposed rules would generally establish new mining disclosure requirements that we believe would not duplicate or overlap with other federal rules. The proposed rules would consolidate all of the Commission's mining disclosure requirements. The proposed rules would further harmonize certain existing disclosure requirements and policies, including the disclosure standard for mining disclosure. We believe that this consolidation would help a mining registrant, including a small entity, comply with its disclosure obligations under the Securities Act and Exchange Act, which could mitigate its reporting burden. We do not believe that the proposed rules would conflict with other federal rules.

F. Significant Alternatives

As noted above, we considered a number of alternatives to the proposed rules. In considering these alternatives, we sought to accomplish our stated objectives, while minimizing any significant economic impact on small entities. In connection with the proposed rules, we considered the following:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Use of performance rather than design standards; and
- Exempting small entities from all or part of the proposed rules.

Neither the current mining disclosure requirements nor the proposed rules exempt or treat differently a small entity with material mining operations. Providing an exemption for, or imposing less extensive disclosure requirements on, small entities with material mining operations would likely increase the risk of inaccurate disclosure concerning those entities' mineral resources, mineral reserves and material exploration results, to the detriment of investors. Moreover, as noted above, a primary goal of the proposed rules is generally to align the Commission's mining disclosure regime with the standards that have developed under the foreign (CRIRSCO-based) codes so that investors would have a more complete understanding of a registrant's mining operations. Those codes do not provide for an exemption for small entities or otherwise treat such entities differently. Therefore, we believe it would be inappropriate for our rules to provide an exemption for, or otherwise treat differently, small entities with material mining operations. We also note that, given that the majority of mining registrants are small entities, exempting them from the proposed rules would effectively disapply the Commission's mining disclosure regime to most of the companies for which such disclosure would be potentially beneficial.[505]

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[501] 5 U.S.C. 601 *et seq.*

[502] 5 U.S.C. 553.

[503] 5 U.S.C. 603(a).

[504] *See* Securities Act Rule 157 (17 CFR 230.157); and Exchange Act Rule 0–10(a) (17 CFR 240.0–10(a)).

As noted above, the proposed rules would consolidate existing mining disclosure rules and policies and thereby facilitate compliance for all registrants, including small entities. We have used design rather than performance standards in connection with the proposed rules because, based on our past experience, we believe the proposed rules would be more beneficial to investors if there were specific disclosure requirements that were uniform for all registrants with material mining operations. The specific disclosure requirements in the proposed rules are intended to promote consistent and comparable disclosure among all such registrants.

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- How the proposed rule amendments can achieve their objective while lowering the burden on small entities;
- the number of small entity companies that may be affected by the proposed amendments;
- the existence or nature of the potential impact of the proposed amendments on small entity companies discussed in the analysis; and
- how to quantify the impact of the proposed amendments.

Respondents are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. We will consider such comments in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule amendments are adopted, and will place those comments in the same public file as comments on the proposed amendments themselves.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[506] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment, or innovation.

We request comment and empirical data on whether our proposal would be a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act.

VIII. Statutory Authority

We are proposing the amendments contained in this document pursuant to Sections 3(b), 7, 10, 19(a), and 28 of the Securities Act and Sections 3(b), 12, 13, 15(d), 23(a), and 36(a) of the Exchange Act.

List of Subjects

17 CFR Parts 229 and 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78l, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78ll, 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309; and Sec. 84001, Pub. L. 114–94, 129 Stat. 1312.

■ 2. Amend § 229.102 by:

■ a. Removing ", mines" in the introductory text;

■ b. Removing the heading "Instructions to Item 102:";

■ c. Redesignating Instructions 1, 2, 3, and 4 to Item 102 as "Instruction 1 to Item 102:", "Instruction 2 to Item 102:", "Instruction 3 to Item 102:", and "Instruction 4 to Item 102:", respectively;

■ d. Revising newly redesignated Instruction 3 to Item 102;

■ e. Removing instructions 5 and 7 to Item 102;

■ f. Redesignating Instruction 6 as "Instruction 5 to Item 102:" and Instructions 8 and 9 as "Instruction 6 to Item 102:" and "Instruction 7 to Item 102:", respectively.

The revision reads as follows:

§ 229.102 (Item 102) Description of property.

* * * * *

Instruction 3 to Item 102: Registrants engaged in mining operations must refer to and, if required, provide the disclosure under subpart 229.1300 of Regulation S–K (§§ 229.1301 through 229.1305), in addition to any disclosure required by this section.

* * * * *

■ 3. Amend § 229.601 by:

■ a. Revising the column headings and adding entry (96) to the exhibit table in paragraph (a);

■ b. Redesignating paragraphs (b)(95)(1) through (3) as paragraphs (b)(95)(i) through (iii), respectively; and

■ c. Adding paragraph (b)(96).

The revisions and additions read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

Exhibit Table

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EXHIBIT TABLE

Securities act forms	Exchange act forms															
	S–1	S–3	SF–1	SF–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K	ABS–EE
* * * * * * *																
(96) Technical report summary[7]	X	X	....	....	X	....	....	X	X	X	X	....	....	....	X	....

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[505] *See* Section IV.B.3., *supra.*

[506] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

EXHIBIT TABLE—Continued

Securities act forms										Exchange act forms					
S–1	S–3	SF–1	SF–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K	ABS–EE

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[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

* * *

[7] If required pursuant to Item 1302 of Regulation S–K.

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(b) * * *

(96) *Technical report summary.* (i) A registrant that, pursuant to subpart 229.1300 of Regulation S–K (§§ 229.1301 through 229.1305), discloses information concerning its mineral resources, mineral reserves or material exploration results must file a technical report summary by a qualified person that, for each material property, identifies and summarizes the scientific and technical information and conclusions reached concerning mineral exploration results, initial assessments used to support disclosure of mineral resources, and preliminary or final feasibility studies used to support disclosure of mineral reserves. Pursuant to § 229.1302(b), a registrant must file the technical report summary as an exhibit to its Securities Act registration statement or Exchange Act registration statement or report when disclosing for the first time mineral resources, mineral reserves or material exploration results or when there is a material change in the mineral resources, mineral reserves or exploration results from the last technical report summary filed for the property.

(ii) The qualified person must sign and date the technical report summary. The qualified person's signature must comply with 17 CFR 230.402(e) or 17 CFR 240.12b–11(d).

(iii) The technical report summary must not include large amounts of technical or other project data, either in the report or as appendices to the report. The qualified person must draft the summary to conform, to the extent practicable, with the plain English principles set forth in 17 CFR 230.421 or 17 CFR 240.13a–20.

(iv)(A) A technical report summary that reports the results of a preliminary or final feasibility study must provide all of the information specified in paragraph (b)(96)(iv)(B) of this section. A technical report summary that reports the results of an initial assessment must, at a minimum, provide the information specified in paragraphs (b)(96)(iv)(B)(*1*) through (*13*) and (b)(96)(iv)(B)(*22*) through (*26*) of this section, and may also include the information specified in paragraph (b)(96)(iv)(B)(*21*) of this section. A technical report summary that reports material exploration results must, at a minimum, provide the information specified in paragraphs (b)(96)(iv)(B)(*1*) through (*11*) and (b)(96)(iv)(B)(*22*) through (*26*) of this section.

(B) A qualified person must include the following information in the technical report summary, as required by paragraph (b)(96)(iv)(A) of this section.

(*1*) *Executive summary.* Briefly summarize the most significant information in the technical report summary, including property description (including mineral rights) and ownership, geology and mineralization, the status of exploration, development and operations, mineral resource and mineral reserve estimates, summary capital and operating cost estimates, permitting requirements, and the qualified person's conclusions and recommendations. The executive summary must be brief and should not contain all of the detailed information in the technical support summary.

(*2*) *Introduction.* Disclose:

(*i*) The registrant for whom the technical report summary was prepared;

(*ii*) The terms of reference and purpose for which the technical report summary was prepared;

(*iii*) The sources of information and data contained in the technical report summary or used in its preparation, with citations if applicable; and

(*iv*) The details of the personal inspection on the property by each qualified person or, if applicable, the reason why a personal inspection has not been completed.

Instruction to paragraph (b)(96)(iv)(B)(2): The qualified person must state whether the technical report summary's purpose was to report mineral resources, mineral reserves or material exploration results. The qualified person must also state, when applicable, that the technical report summary updates a previously filed technical report summary. When filing an update, the qualified person must identify the previous technical report summary by name and date.

(*3*) *Property description.* Describe:

(*i*) The location of the property, accurate to within one mile, using an easily recognizable coordinate system. The qualified person must provide appropriate maps, with proper engineering detail (such as scale, orientation, and titles) to portray the location of the property. Such maps must be legible on the page when printed;

(*ii*) The area of the property;

(*iii*) The name or number of each title, claim, mineral right, lease or option under which the registrant and its subsidiaries have or will have the right to hold or operate the property. If held by leases or options, the registrant must provide the expiration dates of such leases or options and associated payments;

(*iv*) The mineral rights, and how such rights have been obtained at this location, indicating any conditions that the registrant must meet in order to obtain or retain the property;

(*v*) Any significant encumbrances to the property, including current and future permitting requirements and associated timelines, permit conditions, and violations and fines; and

(*vi*) Any other significant factors and risks that may affect access, title, or the right or ability to perform work on the property.

Instruction to paragraph (b)(96)(iv)(B)(3): If the registrant holds a royalty or similar interest in the property, the information in paragraph (b)(96)(iv)(B)(3) of this section must be provided for the property that is owned or operated by a party other than the registrant. In this event, for example, the report must address the documents under which the owner or operator holds or operates the property, the mineral rights held by the owner or operator, conditions required to be met by the owner or operator, significant encumbrances and significant factors and risks relating to the property or work on the property.

(*4*) *Accessibility, climate, local resources, infrastructure, and physiography.* Describe:

(*i*) The topography, elevation, and vegetation;

(*ii*) The means of access to the property, including highways, towns, rivers, railroads, and airports;

(*iii*) The climate and the length of the operating season, as applicable; and

(*iv*) The availability of and required infrastructure, including sources of water, electricity, personnel, and supplies.

(*5*) *History.* Describe:

(*i*) Previous operations, including the names of previous operators, insofar as known; and

(*ii*) The type, amount, quantity, and general results of exploration and development work undertaken by any previous owners or operators.

(*6*) *Geological setting, mineralization, and deposit.* Describe briefly:

(*i*) The regional, local, and property geology;

(*ii*) The significant mineralized zones encountered on the property, including a summary of the surrounding rock types, relevant geological controls, and the length, width, depth, and continuity of the mineralization, together with a description of the type, character, and distribution of the mineralization; and

(*iii*) Each mineral deposit type that is the subject of investigation or exploration together with the geological model or concepts being applied in the investigation or forming the basis of exploration program.

Instruction to paragraph (b)(96)(iv)(B)(6): The qualified person must include at least one stratigraphic column and one cross-section of the local geology to meet the requirements of this paragraph.

(*7*) *Hydrogeology.* Describe:

(*i*) The nature and quality of the sampling methods used to acquire data on surface and groundwater parameters;

(*ii*) The type and appropriateness of laboratory techniques used to test for groundwater flow parameters such as permeability. Include discussions of the quality control and quality assurance procedures;

(*iii*) Results of laboratory testing and the qualified person's interpretation, including any material assumptions. The interpretation must include descriptions of permeable zones or aquifers, flow rates, in-situ saturation, recharge rates and water balance; and

(*iv*) The groundwater models used to characterize aquifers, including material assumptions used in the modeling.

(*8*) *Geotechnical data, testing, and analysis.* Describe:

(*i*) The nature and quality of the sampling methods used to acquire geotechnical data;

(*ii*) The type and appropriateness of laboratory techniques used to test for soil and rock strength parameters, including discussions of the quality control and quality assurance procedures; and

(*iii*) Results of laboratory testing and the qualified person's interpretation, including any material assumptions.

(*9*) *Exploration.* Describe the nature and extent of all relevant exploration work, conducted by or on behalf of, the registrant.

(*i*) For all exploration work other than drilling, describe:

(*A*) The procedures and parameters relating to the surveys and investigations;

(*B*) The sampling methods and sample quality, including whether the samples are representative, and any factors that may have resulted in sample biases;

(*C*) The location, number, type, nature, and spacing or density of samples collected, and the size of the area covered; and

(*D*) The significant results of and the qualified person's interpretation of the exploration information.

(*ii*) For drilling, describe:

(*A*) The type and extent of drilling including the procedures followed;

(*B*) Any drilling, sampling, or recovery factors that could materially impact the accuracy and reliability of the results; and

(*C*) The material results and interpretation of the drilling results.

Instruction 1 to paragraph (b)(96)(iv)(B)(9): The technical report summary must comply with all disclosure standards for material exploration results under Regulation S–K, subpart 229.1300 of this part (§§ 229.1301 through 229.1305).

Instruction 2 to paragraph (b)(96)(iv)(B)(9): For a technical report summary to support disclosure of material exploration results, the qualified person must provide information on all samples or drill holes to meet the requirements of paragraph (b)(96)(iv)(B)(*9*)(*ii*) of this section. If some information is excluded, the qualified person must identify the omitted information and explain why that information is not material.

Instruction 3 to paragraph(b)(96)(iv)(B)(9): For a technical report summary to support disclosure of mineral resources or mineral reserves, the qualified person can meet the requirements of paragraph (b)(96)(iv)(B)(*9*)(*ii*) of this section by providing sampling (including drilling) plans, representative plans and cross-sections of results.

Instruction 4 to paragraph(b)(96)(iv)(B)(9): Reports must include a plan view of the property showing locations of all drill holes and other samples.

(*10*) *Sample preparation, analyses, and security.* Describe:

(*i*) Sample preparation methods and quality control measures employed prior to sending samples to an analytical or testing laboratory, sample splitting and reduction methods, and the security measures taken to ensure the validity and integrity of samples;

(*ii*) Sample preparation, assaying and analytical procedures used, the name and location of the analytical or testing laboratories, the relationship of the laboratory to the registrant, and whether the laboratories are certified by any standards association and the particulars of such certification; and

(*iii*) The nature, extent, and results of quality control procedures and quality assurance actions taken or recommended to provide adequate confidence in the data collection and estimation process.

Instruction to paragraph (b)(96)(iv)(B)(10): This item must also include the author's opinion on the adequacy of sample preparation, security, and analytical procedures. If the analytical procedures used in the analysis are not part of conventional industry practice, the qualified person must state so and provide a justification for why he or she believes the procedure is appropriate in this instance.

(*11*) *Data verification.* Describe the steps taken by the qualified person to verify the data being reported on or which is the basis of this technical report summary, including:

(*i*) Data verification procedures applied by the qualified person;

(*ii*) Any limitations on or failure to conduct such verification, and the reasons for any such limitations or failure; and

(*iii*) The qualified person's opinion on the adequacy of the data for the purposes used in the technical report summary.

(*12*) *Mineral processing and metallurgical testing.* Describe:

(*i*) The nature and extent of the mineral processing or metallurgical testing and analytical procedures;

(*ii*) The degree to which the test samples are representative of the various types and styles of mineralization and the mineral deposit as a whole;

(*iii*) The name and location of the analytical or testing laboratories, the relationship of the laboratory to the registrant, whether the laboratories are certified by any standards association and the particulars of such certification; and

(*iv*) The relevant results including the basis for any assumptions or predictions about recovery estimates. Discuss any processing factors or deleterious elements that could have a significant effect on potential economic extraction.

Instruction to paragraph (b)(96)(iv)(B)(12): This item must include the qualified person's opinion on the adequacy of the data for the purposes used in the technical report summary. If the analytical procedures used in the analysis are not part of conventional industry practice, the qualified person must state so and provide a justification for why he or she believes the procedure is appropriate, in this instance.

(*13*) *Mineral resource estimates.* If this item is included, the technical report summary must:

(*i*) Describe the key assumptions, parameters, and methods used to estimate the mineral resources, in sufficient detail for a reasonably informed person to understand the basis for and how the qualified person estimated the mineral resources;

(*ii*) Provide estimates of mineral resources for all commodities, including estimates of quantities, grade or quality, cut-off grades, and metallurgical or processing recoveries; and

(*iii*) Provide the qualified person's opinion on whether all issues relating to all relevant modifying factors can be resolved with further work.

Instruction 1 to paragraph (b)(96)(iv)(B)(13): The technical report summary must comply with all disclosure standards for mineral resources under subpart 229.1300 of Regulation S–K (§§ 229.1301 through 229.1305).

Instruction 2 to paragraph (b)(96)(iv)(B)(13): The qualified person preparing the mineral resource estimates must round off, to appropriate significant figures chosen to reflect order of accuracy, any estimates of quantity and grade or quality.

Instruction 3 to paragraph (b)(96)(iv)(B)(13): The qualified person must classify mineral resources into inferred, indicated, and measured mineral resources in accordance with §§ 229.1303 and 229.1304. The qualified person must state the uncertainty in the estimates of inferred, indicated, and measured mineral resources and discuss the sources of uncertainty and how they were considered in the uncertainty estimates. Uncertainty estimates for indicated and measured mineral resources must be stated in the form "±x% relative accuracy at y% confidence level over [annual, quarterly, or monthly] production quantities." Uncertainty estimates for inferred mineral resources must be stated in the form "the qualified person expects at least z% of inferred mineral resources to convert to indicated or measured mineral resources with further exploration and analysis."

Instruction 4 to paragraph (b)(96)(iv)(B)(13): The qualified person must consider all sources of uncertainty when reporting the uncertainty associated with each class of mineral resources. Sources of uncertainty that affect such reporting of uncertainty include sampling or drilling methods, data processing and handling, geologic modeling and estimation. The qualified person is not required to use estimates of confidence limits derived from geostatistics or other numerical methods to support the disclosure of uncertainty surrounding mineral resource classification. If the qualified person chooses to use confidence limit estimates from geostatistics or other numerical methods, he or she should consider the limitations of these methods and adjust the estimates appropriately to reflect sources of uncertainty that are not accounted for by these methods.

Instruction 5 to paragraph (b)(96)(iv)(B)(13): The qualified person must support the disclosure of uncertainty associated with each class of mineral resources with a list of all factors considered and explain how those factors contributed to the final conclusion about the level of uncertainty (*i.e.* confidence limits for indicated and measured mineral resources and the proportion of inferred resources expected to be converted to indicated or measured mineral resources with further exploration) underlying the resource.

Instruction 6 to paragraph(b)(96)(iv)(B)(13): Sections 229.1303 and 1304 of Regulation S–K (§§ 229.1303 and 229.1304) notwithstanding, in this technical report summary mineral resource estimates may be inclusive of mineral reserves so long as this is clearly stated with equal prominence to the rest of the item. If the qualified person chooses to disclose resources inclusive of mineral reserves, he or she must also clearly state the mineral resources exclusive of mineral reserves in the technical report summary.

Instruction 7 to paragraph (b)(96)(iv)(B)(13): The technical report summary must include mineral resource estimates of in-situ material, plant or mill feed, and saleable product.

Instruction 8 to paragraph (b)(96)(iv)(B)(13): The qualified person must estimate cut-off grades based on assumed costs for surface or underground operations and commodity prices that are no higher than 24-month average prices. The qualified person may use sales prices as determined by applicable contractual agreements.

Instruction 9 to paragraph (b)(96)(iv)(B)(13): Unless otherwise stated, cut-off grades also refer to net smelter returns, pay limits and other similar terms.

Instruction 10 to paragraph (b)(96)(iv)(B)(13): When the qualified person reports the grade or quality for a multiple commodity mineral resource as metal or mineral equivalent, he or she must also report the individual grade of each metal or mineral and the commodity prices, recoveries, and any other relevant conversion factors used to estimate the metal or mineral equivalent grade.

(*14*) *Mineral reserve estimates.* If this item is included, the technical report summary must:

(*i*) Describe the key assumptions, parameters, and methods used to estimate the mineral reserves, in sufficient detail for a reasonably informed person to understand the basis for converting, and how the qualified person converted, indicated and measured mineral resources into the mineral reserves;

(*ii*) Provide estimates of mineral reserves for all commodities, including estimates of quantities, grade or quality, cut-off grades, and metallurgical or processing recoveries;

(*iii*) Provide the qualified person's opinion on how the mineral reserve estimates could be materially affected by risk factors associated with or changes to any aspect of the modifying factors; and

(*iv*) If a pre-feasibility study is used to support mineral reserve disclosure, the qualified person must provide a justification for using a pre-feasibility study instead of a feasibility study.

Instruction 1 to paragraph (b)(96)(iv)(B)(14): The technical report summary must comply with all disclosure standards for mineral resources under subpart 229.1300 of Regulation S–K (§§ 229.1301 through 229.1305)

Instruction 2 to paragraph (b)(96)(iv)(B)(14): The qualified person preparing mineral reserve estimates must round off, to appropriate significant figures chosen to reflect order of accuracy, any estimates of quantity and grade or quality.

Instruction 3 to paragraph (b)(96)(iv)(B)(14): The qualified person must classify mineral reserves into probable and proven mineral reserves in accordance with §§ 229.1303 and 229.1304.

Instruction 4 to paragraph (b)(96)(iv)(B)(14): The technical report summary must include mineral reserve estimates of in-situ material, plant or mill feed, and saleable product.

Instruction 5 to paragraph (b)(96)(iv)(B)(14): The qualified person must estimate cut-off grades based on detailed cut of grade analysis that includes long term prices that are no higher than the 24-month historical average prices. The qualified person may use the sales prices as determined by applicable contractual agreements.

Instruction 6 to paragraph (b)(96)(iv)(B)(14): When the qualified person reports the grade or quality for a multiple commodity mineral reserve as metal or mineral equivalent, he or she must also report the individual grade of each metal or mineral and the commodity prices, recoveries, and any other relevant conversion factors used to estimate the metal or mineral equivalent grade.

(*15*) *Mining methods.* Describe the current or proposed mining methods and the reasons for selecting these methods as the most suitable for the mineral reserves under consideration. Include:

(*i*) Geotechnical and hydrological models, and other parameters relevant to mine designs and plans;

(*ii*) Production rates, expected mine life, mining unit dimensions, and mining dilution and recovery factors;

(*iii*) Requirements for stripping, underground development, and backfilling; and

(*iv*) Required mining equipment fleet and machinery, and personnel.

Instruction to paragraph (b)(96)(iv)(B)(15): The qualified person must include at least one map of the final mine outline.

(*16*) *Processing and recovery methods.* Describe the current or proposed mineral processing methods and the reasons for selecting these methods as the most suitable for extracting the valuable products from the mineralization under consideration. Include:

(*i*) A description or flow sheet of any current or proposed process plant;

(*ii*) Plant throughput and design, equipment characteristics and specifications; and

(*iii*) Current or projected requirements for energy, water, process materials, and personnel.

Instruction 1 to paragraph (b)(96)(iv)(B)(16): If the processing method, plant design or other parameters have never been used to successfully extract the valuable product from such mineralization, the qualified person must so state and provide a justification for why he or she believes the approach will be successful in this instance.

Instruction 2 to paragraph (b)(96)(iv)(B)(16): If the processing method, plant design or other parameters have never been used to successfully extract the valuable product from such mineralization and is still under development, then no mineral resources or reserves can be disclosed on the basis of that method.

(*17*) *Infrastructure.* Describe the required infrastructure for the project, including roads, rail, port facilities, dams, dumps and leach pads, tailings disposal, power, water and pipelines, as applicable.

Instruction to paragraph (b)(96)(iv)(B)(17): The qualified person must include at least one map showing the layout of the infrastructure.

(*18*) *Market studies.* Describe the market for the products of the mine, including justification for demand or sales over the life of the mine (or length of cash flow projections). Include:

(*i*) Information concerning markets for the property's production, including the nature and material terms of any agency relationships and the results of any relevant market studies, commodity price projections, product valuation, market entry strategies, and product specification requirements; and

(*ii*) Descriptions of all material contracts required for the issuer to develop the property, including mining, concentrating, smelting, refining, transportation, handling, hedging arrangements, and forward sales contracts. State which contracts have been executed and which are still under negotiation. For all contracts with affiliated parties, discuss whether the registrant obtained terms, rates or charges the same as could be obtained had the contract been negotiated at arm's length with an unaffiliated third party.

(*19*) *Environmental studies, permitting, and social or community impact.* Describe the environmental, permitting, and social or community factors related to the project. Include:

(*i*) The results of environmental studies (*e.g.* environmental baseline studies or impact assessments);

(*ii*) Requirements and plans for waste and tailings disposal, site monitoring, and water management during operations and post mine closure;

(*iii*) Project permitting requirements, the status of any permit applications, and any known requirements to post performance or reclamation bonds;

(*iv*) Requirements and plans for social or community engagement and the status of any negotiations or agreements with local communities;

(*v*) Mine closure plans, including remediation and reclamation plans, and the associated costs; and

(*vi*) The qualified person's opinion on the adequacy of current plans to address any issues related to environmental, permitting and social or community factors.

Instruction to paragraph (b)(96)(iv)(B)(19): The qualified person must include descriptions of any commitments to ensure local procurement and hiring.

(*20*) *Capital and operating costs.* Provide estimates of capital and operating costs, with the major components set out in tabular form. Explain and justify the basis for the cost estimates including any contingency budget estimates. State the accuracy level of the capital and operating cost estimates.

Instruction to paragraph (b)(96)(iv)(B)(20): To assess the accuracy of the capital and operating cost estimates, the qualified person must take into account the risks associated with the specific engineering estimation methods used to arrive at the estimates. As part of this, the qualified person must take into consideration the accuracy of the estimation methods in prior similar environments. The accuracy of capital and operating cost estimates must comply with § 229.1302.

(*21*) *Economic analysis.* Describe:

(*i*) The key assumptions, parameters, and methods used to demonstrate economic viability;

(*ii*) Results of the economic analysis, including annual cash flow forecasts based on an annual production schedule for the life of project, and measures of economic viability such as net present value (NPV), internal rate of return (IRR), and payback period of capital; and

(*iii*) Sensitivity analysis results using variants in commodity price, grade, capital and operating costs, or other significant input parameters, as appropriate, and discuss the impact on the results of the economic analysis.

Instruction 1 to paragraph (b)(96)(iv)(B)(21): The qualified person may, but is not required to, include an economic analysis in an initial assessment. If an initial assessment includes this item, the economic analysis must be based on only measured and indicated mineral resources. The qualified person must not include inferred mineral resources in any economic analysis.

Instruction 2 to paragraph (b)(96)(iv)(B)(21): If the qualified person includes an economic analysis in an initial assessment, the qualified person must also include a statement, of equal prominence to the rest of this section, that, unlike mineral reserves, mineral resources do not have demonstrated economic viability.

Instruction 3 to paragraph (b)(96)(iv)(B)(21): To comply with paragraph (b)(96)(iv)(B) (*21*)(*i*) of this section, the qualified person must provide all material assumptions including discount rates, exchange rates, commodity prices, and taxes, royalties, and other government levies or interests applicable to the mineral project or to production, and to revenues or income from the mineral project.

(*22*) *Adjacent properties.* Where applicable, a qualified person may include relevant information concerning an adjacent property if:

(*i*) Such information was publicly disclosed by the owner or operator of the adjacent property;

(*ii*) The source of the information is identified;

(*iii*) The qualified person states that he or she has been unable to verify the information and that the information is not necessarily indicative of the mineralization on the property that is the subject of the technical report; and

(*iv*) The technical report clearly distinguishes between the information from the adjacent property and the information from the property that is the subject of the technical report summary.

(*23*) *Other relevant data and information.* Include any additional information or explanation necessary to provide a complete and balanced presentation of the value of the property to the registrant. Information included in this item must comply with subpart 229.1300 of Regulation S–K (§§ 229.1301 through 229.1305).

(*24*) *Interpretation and conclusions.* The qualified person must summarize the interpretations of and conclusions based on the data and analysis in the technical report summary. He or she must also discuss any significant risks and uncertainties that could reasonably be expected to affect the reliability or confidence in the exploration results, mineral resource or mineral reserve estimates, or projected economic outcomes.

(*25*) *Recommendations.* If applicable, the qualified person must describe the recommendations for additional work with associated costs. If the additional work program is divided into phases, the costs for each phase must be provided along with decision points at the end of each phase.

(*26*) *References.* Include a list of all references cited in the technical report summary in sufficient detail so that a reader can locate each reference.

§ 229.801 [Amended]

■ 4. Amend § 229.801 by removing paragraph (g).

§ 229.802 [Amended]

■ 5. Amend § 229.802 by removing paragraph (g).

■ 6. Add subpart 229.1300 to read as follows:

Subpart 229.1300—Disclosure by Registrants Engaged in Mining Operations

Sec.
229.1301 (Item 1301) General instructions and definitions.
229.1302 (Item 1302) Qualified person, technical report summary, and technical studies.
229.1303 (Item 1303) Summary disclosure.
229.1304 (Item 1304) Individual property disclosure.
229.1305 (Item 1305) Internal controls disclosure.

Subpart 229.1300—Disclosure by Registrants Engaged in Mining Operations

§ 229.1301 (Item 1301) General instructions and definitions.

(a) A registrant must provide the disclosure specified in subpart 229.1300 of this part if its mining operations are material to its business or financial condition. For purposes of this subpart, the term *material* has the same meaning as under § 230.405 or § 240.12b–2 of this chapter.

(b) When determining whether its mining operations are material, a registrant must:

(1) Consider both quantitative and qualitative factors, assessed in the context of the registrant's overall business and financial condition;

(2) Aggregate mining operations on all of its mining properties, regardless of the stage of the mining property, and size or type of commodity produced, including coal, metalliferous minerals, industrial materials, geothermal energy, and mineral brines; and

(3) Include, for each property, as applicable, all related activities from exploration through extraction to the first point of material external sale, including processing, transportation, and warehousing.

Instruction 1 to paragraph (b): As used in this section, the term *mining operations* includes operations on all mining properties that a registrant:

i. Owns or in which it has, or it is probable that it will have, a direct or indirect economic interest;

ii. Operates, or it is probable that it will operate, under a lease or other legal agreement that grants the registrant ownership or similar rights that authorize it, as principal, to sell or otherwise dispose of the mineral; or

iii. Has, or it is probable that it will have, an associated royalty or similar right.

Instruction 2 to paragraph (b): A registrant's mining operations are presumed to be material if they consist of 10% or more of its total assets.

Instruction 3 to paragraph (b): A registrant's mining operations may be material even if they comprise less than 10% of its total assets if, when considered with other quantitative or qualitative factors, the required disclosure concerning the mining operations would significantly alter the total mix of information available.

(c) Upon a determination that its mining operations are material, a registrant must provide summary disclosure concerning all of its mining activities, as specified in § 229.1303, as well as individual property disclosure concerning each of its mining properties that is material to its business or financial condition, as specified in § 229.1304. When providing either summary or individual property disclosure, the registrant:

(1) Should provide an appropriate glossary if the disclosure requires the use of technical terms relating to geology, mining or related matters, which cannot readily be found in conventional dictionaries;

(2) Should not include detailed illustrations and technical reports, full feasibility studies or other highly technical data. The registrant shall, however, furnish such reports and other material supplementally to the staff upon request; and

(3) Should use plain English principles, to the extent practicable, such as those provided in 17 CFR 230.421 and 17 CFR 240.13a–20, to enhance the readability of the disclosure for investors.

(d) *Definitions.* As used in this subpart, these terms have the following meanings:

(1) *Cut-off grade* is the grade (*i.e.*, the concentration of metal or mineral in rock) which determines the destination of the material during mining. For purposes of establishing "prospects of economic extraction," the cut-off grade is the grade which distinguishes material that is deemed to have no

economic value (it will not be mined in underground mining or if mined in surface mining, its destination will be the waste dump) from material that is deemed to have economic value (its ultimate destination during mining will be a processing facility). Other terms used in similar fashion as cut-off grades include net smelter returns, pay limits, and break-even stripping ratio.

(2) A *development stage issuer* is one that is engaged in the preparation of mineral reserves for extraction on at least one material property.

(3) A *development stage property* is one that has mineral reserves disclosed, pursuant to this subpart, but no material extraction.

(4) *Exploration results* are data and information generated by mineral exploration programs (*i.e.,* programs consisting of sampling, drilling, trenching, analytical testing, assaying, and other similar activities undertaken to locate, investigate, define or delineate a mineral prospect or mineral deposit) that are not part of a disclosure of mineral resources or reserves. A registrant must not use exploration results alone to derive estimates of tonnage, grade, and production rates, or in an assessment of economic viability.

(5) An *exploration stage issuer* is one that has no material property with mineral reserves disclosed.

(6) An *exploration stage property* is one that has no mineral reserves disclosed.

(7) A *feasibility study:*

(i) Is a comprehensive technical and economic study of the selected development option for a mineral project, which includes detailed assessments of all applicable modifying factors, as defined by this section, together with any other relevant operational factors, and detailed financial analysis that are necessary to demonstrate, at the time of reporting, that extraction is economically viable. The results of the study may serve as the basis for a final decision by a proponent or financial institution to proceed with, or finance, the development of the project.

(ii) A feasibility study is more comprehensive, and with a higher degree of accuracy, than a pre-feasibility study. It must contain mining, infrastructure, and process designs completed with sufficient rigor to serve as the basis for an investment decision or to support project financing.

Note to paragraph (d)(7): The confidence level in the results of a feasibility study is higher than that with a pre-feasibility study. Terms such as *full, final, comprehensive, bankable, or definitive* feasibility study are equivalent to a feasibility study.

(8) A *final market study* is a comprehensive study to determine and support the existence of a readily accessible market for the mineral. It must, at a minimum, include product specifications based on final geologic and metallurgical testing, supply and demand forecasts, historical prices for the preceding five or more years, estimated long term prices, evaluation of competitors (including products and estimates of production volumes, sales, and prices), customer evaluation of product specifications, and market entry strategies or sales contracts. The study must provide justification for all assumptions, which must include all material contracts required to develop and sell the mineral reserves.

(9)(i) An *indicated mineral resource* is that part of a mineral resource for which quantity and grade or quality are estimated on the basis of adequate geological evidence and sampling.

(ii) As used in this subpart, the term *adequate geological evidence* means evidence that is sufficient to establish geological and grade or quality continuity with reasonable certainty. The level of geological certainty associated with an indicated mineral resource is sufficient to allow a qualified person to apply modifying factors, as defined in this section, in sufficient detail to support mine planning and evaluation of the economic viability of the deposit.

Note to paragraph (d)(9): An indicated mineral resource has a lower level of confidence than that applying to a measured mineral resource and may only be converted to a probable mineral reserve.

(10)(i) An *inferred mineral resource* is that part of a mineral resource for which quantity and grade or quality are estimated on the basis of limited geological evidence and sampling.

(ii) As used in this subpart, the term *limited geological evidence* means evidence that is only sufficient to establish that geological and grade or quality continuity is more likely than not. The level of geological uncertainty associated with an inferred mineral resource is too high to apply modifying factors, as defined in this section, in a manner useful for evaluation of economic viability.

(iii) A qualified person: (A) Must have a reasonable expectation that the majority of inferred mineral resources could be upgraded to indicated or measured mineral resources with continued exploration; and

(B) Should be able to defend the basis of this expectation before his or her peers.

Note to paragraph (d)(10): An inferred mineral resource has the lowest level of geological confidence of all mineral resources, which prevents the application of the modifying factors in a manner useful for evaluation of economic viability. As such, inferred mineral resource may not be considered when assessing the economic viability of a mining project and may not be converted to a mineral reserve.

(11)(i) An *initial assessment* is a preliminary technical and economic study of the economic potential of all or parts of mineralization to support the disclosure of mineral resources. The initial assessment must be prepared by a qualified person and must include appropriate assessments of reasonably assumed modifying factors, as defined by this section, together with any other relevant operational factors that are necessary to demonstrate, at the time of reporting, that there are reasonable prospects for economic extraction.

(ii) An initial assessment is required for disclosure of mineral resources but cannot be used as the basis for disclosure of mineral reserves.

(12)(i) A *measured mineral resource* is that part of a mineral resource for which quantity and grade or quality are estimated on the basis of conclusive geological evidence and sampling.

(ii) As used in this subpart, the term *conclusive geological evidence* means evidence that is sufficient to test and confirm geological and grade or quality continuity. The level of geological certainty associated with a measured mineral resource is sufficient to allow a qualified person to apply modifying factors, as defined in this section, in sufficient detail to support detailed mine planning and final evaluation of the economic viability of the deposit.

Note to paragraph (d)(12): A measured mineral resource has a higher level of confidence than that applying to either an indicated mineral resource or an inferred mineral resource. It may be converted to a proven mineral reserve or to a probable mineral reserve.

(13)(i) A *mineral reserve* is an estimate of tonnage and grade or quality of indicated and measured mineral resources that, in the opinion of the qualified person, can be the basis of an economically viable project. More specifically, it is the economically mineable part of a measured or indicated mineral resource, net of allowances for diluting materials and for losses that may occur when the material is mined or extracted.

(ii) The determination that part of a measured or indicated mineral resource is economically mineable must be based on a preliminary feasibility (pre-feasibility) or feasibility study, as defined by this section, conducted by a qualified person applying the modifying factors to indicated or measured mineral resources. Such study must demonstrate that, at the time of reporting, extraction of the mineral reserve is economically viable under reasonable investment and market assumptions. The study must establish a life of mine plan that is technically achievable and economically viable, which will be the basis of determining the mineral reserve.

(iii) As used in this subpart, the term *economically viable* means that the qualified person has determined, using a discounted cash flow analysis, or has otherwise analytically determined, that extraction of the mineral reserve is economically viable under reasonable investment and market assumptions.

(iv) As used in this subpart, the term *investment and market assumptions* includes all assumptions made about the prices, exchange rates, sales volumes and costs that are necessary and are used to determine the economic viability of the reserves. The price shall be no higher than the average spot price during the 24-month period prior to the end of the fiscal year covered by the report, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period, except in cases where sales prices are determined by contractual agreements. In such a case, the qualified person may use the price set by the contractual arrangement, provided that such price is reasonable, and the qualified person discloses that he or she is using a contractual price and discloses the contractual price used.

Note to paragraph (d)(13): A qualified person must subdivide mineral reserves, in order of increasing confidence in the results obtained from the application of the modifying factors to the indicated and measured mineral resources, into probable mineral reserves and proven mineral reserves, as defined in this section.

(14)(i) A *mineral resource* is a concentration or occurrence of material of economic interest in or on the Earth's crust in such form, grade or quality, and quantity that there are reasonable prospects for economic extraction.

Note to paragraph (d)(14)(i): A mineral resource is a reasonable estimate of mineralization, taking into account relevant factors such as cut-off grade, likely mining dimensions, location or continuity, that, with the assumed and justifiable technical and economic conditions, is likely to, in whole or in part, become economically extractable. It is not merely an inventory of all mineralization drilled or sampled.

(ii) As used in this subpart, the term *material of economic interest* includes mineralization, including dumps and tailings, geothermal fields, mineral brines, and other resources extracted on or within the earth's crust. It does not include oil and gas resources as defined in Regulation S–X § 210.4–10(a)(16)(D) of this chapter, gases (*e.g.,* helium and carbon dioxide), and water.

Note to paragraph (d)(14)(ii): A qualified person must subdivide mineral resources, in order of increasing geological confidence, into inferred, indicated and measured mineral resources.

(iii) When determining the existence of a mineral resource, a qualified person, as defined by this section, must:

(A) Be able to estimate or interpret the location, quantity, grade or quality continuity, and other geological characteristics of the mineral resource from specific geological evidence and knowledge, including sampling; and

(B) Conclude that there are reasonable prospects for economic extraction of the mineral resource based on an initial assessment, as defined in this section, that he or she conducts by qualitatively applying the modifying factors, as defined by this section, likely to influence the prospect of economic extraction.

(15) *Modifying factors* are the factors that a qualified person must apply to mineralization or geothermal energy and then evaluate in order to establish the economic prospects of mineral resources, or the economic viability of mineral reserves. A qualified person must apply and evaluate modifying factors to convert measured and indicated mineral resources to proven and probable mineral reserves. These factors include, but are not restricted to, mining, energy recovery and conversion, processing, metallurgical, economic, marketing, legal, environmental, infrastructure, social and governmental factors. The number, type and specific characteristics of the modifying factors applied will necessarily be a function of and depend upon the mineral, mine, property, or project.

(16)(i) A *preliminary feasibility study* (*pre-feasibility study*) is a comprehensive study of a range of options for the technical and economic viability of a mineral project that has advanced to a stage where a qualified person has determined (in the case of underground mining) a preferred mining method, or (in the case of surface mining) a pit configuration, and in all cases has determined an effective method of mineral processing and an effective plan to sell the product.

(ii) A pre-feasibility study includes a financial analysis based on reasonable assumptions, based on appropriate testing, about the modifying factors and the evaluation of any other relevant factors that are sufficient for a qualified person to determine if all or part of the indicated and measured mineral resources may be converted to mineral reserves at the time of reporting. The financial analysis must have the level of detail necessary to demonstrate, at the time of reporting, that extraction is economically viable.

Note to paragraph (d)(16): A pre-feasibility study is less comprehensive and results in a lower confidence level than a feasibility study. A pre-feasibility study is more comprehensive and results in a higher confidence level than an initial assessment.

(17) A *preliminary market study* is a study that is sufficiently rigorous and comprehensive to determine and support the existence of a readily accessible market for the mineral. It must, at a minimum, include product specifications based on preliminary geologic and metallurgical testing, supply and demand forecasts, historical prices for the preceding five or more years, estimated long term prices, evaluation of competitors (including products and estimates of production volumes, sales, and prices), customer evaluation of product specifications, and market entry strategies. The study must provide justification for all assumptions. It can, however, be less rigorous and comprehensive than a final market study, which is required for a full feasibility study.

(18)(i) A *probable mineral reserve* is the economically mineable part of an indicated and, in some cases, a measured mineral resource.

(ii) For a probable mineral reserve, the qualified person's confidence in the results obtained from the application of the modifying factors and in the estimates of tonnage and grade or quality is lower than what is sufficient for a classification as a proven mineral reserve, but is still sufficient to demonstrate that, at the time of reporting, extraction of the mineral reserve is economically viable under reasonable investment and market assumptions. The lower level of confidence is due to higher geologic uncertainty when the qualified person converts an indicated mineral resource to a probable reserve or higher risk in the results of the application of modifying factors at the time when the qualified person converts a measured mineral resource to a probable mineral reserve.

(iii) A qualified person must classify a measured mineral resource as a probable mineral reserve when his or her confidence in the results obtained from the application of the modifying factors to the measured mineral resource is lower than what is sufficient for a proven mineral reserve.

(19) A *production stage issuer* is one that is engaged in material extraction of mineral reserves on at least one material property.

(20) A *production stage property* is one with material extraction of mineral reserves.

(21)(i) A *proven mineral reserve* is the economically mineable part of a measured mineral resource.

(ii) For a proven mineral reserve, the qualified person has a high degree of confidence in the results obtained from the application of the modifying factors and in the estimates of tonnage and grade or quality.

(iii) A proven mineral reserve can only result from conversion of a measured mineral resource.

(22) A *qualified person* is:

(i) A mineral industry professional with at least five years of relevant experience in the type of mineralization and type of deposit under consideration and in the specific type of activity that person is undertaking on behalf of the registrant; and

(ii) An eligible member or licensee in good standing of a recognized professional organization at the time the technical report is prepared. For an organization to be a recognized professional organization, it must:

(A) Be either:

(*1*) An organization recognized within the mining industry as a reputable professional association, or

(*2*) A board authorized by U.S. federal, state or foreign statute to regulate professionals in the mining, geoscience or related field;

(B) Admit eligible members primarily on the basis of their academic qualifications and experience;

(C) Establish and require compliance with professional standards of competence and ethics;

(D) Require or encourage continuing professional development;

(E) Have and apply disciplinary powers, including the power to suspend or expel a member regardless of where the member practices or resides; and (F) Provide a public list of members in good standing.

Instruction 1 to paragraph (d)(22): The term *relevant experience* means, for purposes of determining whether a party is a qualified person, that the party has experience in the specific type of activity that the person is undertaking on behalf of the registrant. If the qualified person is preparing or supervising the preparation of a technical report concerning exploration results, the relevant experience must be in exploration. If the qualified person is estimating, or supervising the estimation of mineral resources, the relevant experience must be in the estimation, assessment and evaluation of mineral resources and associated modifying factors, as defined in this section. If the qualified person is estimating, or supervising the estimation of mineral reserves, the relevant experience must be in engineering and other disciplines required for the estimation, assessment, evaluation and economic extraction of mineral reserves.

Instruction 2 to paragraph (d)(22): The term *relevant experience* also means, for purposes of determining whether a party is a qualified person, that the party has experience evaluating the specific type of mineral deposit under consideration, *e.g.*, coal, metal, base metal, industrial mineral, mineral brine, or geothermal fields. The type of experience necessary to qualify as relevant is a facts and circumstances determination. For example, experience in a high-nugget, vein-type mineralization such as tin or tungsten would likely be relevant experience for estimating mineral resources for vein-gold mineralization whereas experience in a low grade disseminated gold deposit likely would not be relevant.

Instruction 3 to paragraph (d)(22): It is not always necessary for a person to have five years' experience in each and every type of deposit in order to be an eligible qualified person if that person has relevant experience in similar deposit types. For example, a person with 20 years' experience in estimating mineral resources for a variety of metalliferous hard-rock deposit types may not require as much as five years of specific experience in porphyry-copper deposits to act as a qualified person. Relevant experience in the other deposit types could count towards the experience in relation to porphyry-copper deposits.

Instruction 4 to paragraph (d)(22): For a qualified person providing a technical report for exploration results or mineral resource estimates, relevant experience also requires, in addition to experience in the type of mineralization, sufficient experience with the sampling and analytical techniques, as well as extraction and processing techniques, relevant to the mineral deposit under consideration. Sufficient experience means that level of experience necessary to be able to identify, with substantial confidence, problems that could affect the reliability of data and issues associated with processing.

Instruction 5 to paragraph (d)(22): For a qualified person applying the modifying factors, as defined by this section, to convert mineral resources to mineral reserves, relevant experience also requires:

i. Sufficient knowledge and experience in the application of these factors to the mineral deposit under consideration; and

ii. Experience with the geology, geostatistics, mining, extraction and processing that is applicable to the type of mineral and mining under consideration.

§ 229.1302 (Item 1302) Qualified person, technical report summary, and technical studies.

(a) A registrant's disclosure of exploration results, mineral resources or mineral reserves, as required by § 229.1303 and § 229.1304, must be based on and accurately reflect information and supporting documentation prepared by a qualified person, as defined in § 229.1301(d). The registrant is responsible for determining that the person meets the qualifications specified under the definition of qualified person in § 229.1301(d), and that the disclosure in the registrant's filing accurately reflects the information provided by the qualified person.

(b)(1) The registrant must obtain a dated and signed technical report summary from the qualified person, which, pursuant to § 229.601(b)(96), identifies and summarizes the information reviewed and conclusions reached by the qualified person about the registrant's mineral resources, mineral reserves or material exploration results determined to be on each material property.

(2) The registrant must file the technical report summary, pursuant to § 229.601(b)(96), as an exhibit to the relevant registration statement or other Commission filing when disclosing for the first time mineral reserves, mineral resources or material exploration results or when there is a material change in the mineral reserves, mineral resources or exploration results from the last technical report summary filed for the property.

Instruction to paragraph (b)(2): A royalty company does not have to submit a separate technical report summary for a property that is covered by a current technical report summary filed by the producing mining registrant. In that situation, the royalty company must incorporate by reference the producing registrant's previously filed technical report summary in the royalty company's filing with the Commission.

(3)(i) The registrant must obtain the written consent of the qualified person to the use of the qualified person's name and any quotation or other use of the technical report summary in the registration statement or report prior to filing the technical report summary with the Commission.

(ii) For Securities Act filings, the registrant must file the written consent as an exhibit to the registration statement pursuant to §§ 230.436 and 230.601(b)(23) of this chapter.

(4) The registrant must identify the qualified person who prepared the technical report summary in the filed registration statement or report and state whether the qualified person is an employee of the registrant. If the qualified person is not an employee of the registrant, the registrant must name the qualified person's employer, disclose whether the qualified person or the qualified person's employer is an affiliate of the registrant or another entity that has an ownership, royalty or other interest in the property that is the subject of the technical report summary, and if an affiliate, describe the nature of the affiliation.

Instruction to paragraph (b)(4): As used in this section, *affiliate* has the same meaning as in § 230.405 or § 240.12b–2 of this chapter.

(c) A registrant's disclosure of mineral resources under subpart 229.1300 of this part must be based upon a qualified person's initial assessment, as defined in § 229.1301(d), which supports the determination of mineral resources. At a minimum, the initial assessment must include the qualified person's qualitative evaluation of applicable modifying factors to establish the economic potential of the mining property or project. The technical report summary submitted by the qualified person to support a determination of mineral resources must describe the procedures, findings and conclusions reached for the initial assessment, as required by § 229.601(b)(96).

Instruction 1 to paragraph (c): A qualified person must include cut-off grade estimation, based on assumed unit costs for surface or underground operations and estimated mineral prices, in the initial assessment. To estimate mineral prices, the qualified person must use a commodity price that is no higher than the average spot price during the 24-month period prior to the end of the last fiscal year, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period, unless prices are defined by contractual arrangements. In such a case, the qualified person may use the price set by the contractual arrangement, provided that such price is reasonable, and the qualified person discloses that he or she is using a contractual price and discloses the contractual price used.

Instruction 2 to paragraph (c): The qualified person must provide qualitative assessment of all relevant modifying factors, as defined in § 229.1301(d), to establish economic potential and justify why he or she believes that all issues can be resolved with further exploration and analysis. As provided by Table 1 of this subpart, those factors include, but are not limited to:

i. Site infrastructure (*e.g.* whether access to power and site is possible);

ii. Mine design and planning (*e.g.* what is the broadly defined mining method);

iii. Processing plant (*e.g.* whether all products used in assessing prospects of economic extraction can be processed with methods consistent with each other);

iv. Environmental compliance and permitting (*e.g.* what are the required permits and corresponding agencies and whether significant obstacles exist to obtaining those permits); and

v. Any other reasonably assumed modifying factors, including socio-economic factors, necessary to demonstrate reasonable prospects for economic extraction.

Instruction 3 to paragraph (c): Additionally, a qualified person may include cash flow analysis in an initial assessment to demonstrate economic potential. The qualified person may not, however, use inferred mineral resources in such cash flow analysis. If the qualified person includes cash flow analysis in the initial assessment, then operating and capital cost estimates must have an accuracy level of at least approximately ±50% and a contingency level of no greater than 25%, as provided by Table 1 of this subpart. The qualified person must state the accuracy and contingency levels in the initial assessment.

Instruction 4 to paragraph (c): The qualified person should refer to Table 1 of this subpart for the assumptions permitted to be made when preparing the initial assessment.

TABLE 1 TO SUBPART 229.1300—SUMMARY DESCRIPTION OF MODIFYING FACTORS EVALUATED IN TECHNICAL STUDIES

Factors	Initial assessment	Preliminary feasibility study	Feasibility study
Site infrastructure	Establish whether or not access to power and site is possible. Assume infrastructure location, plant area required, type of power supply, site access roads and camp/town site, if required.	Required access roads, infrastructure location and plant area defined. Source of all utilities (power, water, etc.) required for development and production defined with initial designs suitable for cost estimates. Camp/Town site finalized.	Required access roads, infrastructure location and plant area finalized. Source of all required utilities (power, water, etc.) for development and production finalized. Camp/Town site finalized
Mine design & planning	Mining method defined broadly as surface or underground. Production rates assumed.	Preferred underground mining method or the pit configuration for surface mine defined. Detailed mine layouts drawn for each alternative. Development and production plan defined for each alternative with required equipment fleet specified.	Mining method finalized. Detailed mine layouts finalized for preferred alternative. Development and production plan finalized for preferred alternative with required equipment fleet specified

TABLE 1 TO SUBPART 229.1300—SUMMARY DESCRIPTION OF MODIFYING FACTORS EVALUATED IN TECHNICAL STUDIES—Continued

Factors	Initial assessment	Preliminary feasibility study	Feasibility study
Processing plant	Establish that all products used in assessing prospects of economic extraction can be processed with methods consistent with each other. Processing method and plant throughput assumed.	Detailed bench lab tests conducted. Detailed process flow sheet, equipment sizes, and general arrangement completed. Detailed plant throughput specified.	Detailed bench lab tests conducted. Pilot plant test completed, if required, based on risk. Process flow sheet, equipment sizes, and general arrangement finalized. Final plant throughput specified
Environmental compliance & permitting.	List of required permits & agencies drawn. Determine if significant obstacles exist to obtaining permits. Identify pre-mining land uses. Assess requirements for baseline studies. Assume post-mining land uses. Assume tailings disposal, reclamation, and mitigation plans.	Identification and detailed analysis of requirements or interests of agencies, NGOs, communities and other stakeholders. Detailed baseline studies with preliminary impact assessment (internal). Detailed tailings disposal, reclamation and mitigation plans.	Identification and detailed analysis of requirements or interests of agencies, NGOs, communities and other stakeholders finalized. Completed baseline studies with final impact assessment (internal). Tailings disposal, reclamation and mitigation plans finalized
Other modifying factors [1]	Appropriate assessments of other reasonably assumed modifying factors necessary to demonstrate reasonable prospects for economic extraction.	Reasonable assumptions, based on appropriate testing, on the modifying factors sufficient to demonstrate that extraction is economically viable.	Detailed assessments of modifying factors necessary to demonstrate that extraction is economically viable
Capital costs	Optional.[2] If included: Accuracy: ±50%. Contingency: ≤25%	Accuracy: ±25% Contingency: ≤15%	Accuracy: ±15%. Contingency: ≤10%.
Operating costs	Optional.[2] If included: Accuracy: ±50%. Contingency: ≤25%	Accuracy: ±25% Contingency: ≤15%	Accuracy: ±15%. Contingency: ≤10%.
Economic analysis [3]	Optional. If included: Taxes and revenues are assumed. Discounted cash flow analysis based on assumed production rates and revenues from available measured and indicated mineral resources.	Taxes described in detail; revenues are estimated based on at least a preliminary market study; economic viability assessed by detailed discounted cash flow analysis.	Taxes described in detail; revenues are estimated based on at least a final market study or possible letters of intent to purchase; economic viability assessed by detailed discounted cash flow analysis

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[1] The modifying factors, as defined in this section, include, but are not limited to, the factors listed in this table. The number, type and specific characteristics of the modifying factors applied will be a function of and depend upon the mineral, mine, property, or project.

[2] Initial Assessment, as defined in this section, does not require cash flow analyses or operating and capital cost estimates. The qualified person may include such cash flow analyses at his or her discretion.

[3] Initial assessment does not require capital and operating cost estimates or economic analysis, although it requires unit cost assumptions based on an assumption that the resource will be exploited with surface or underground mining methods. Economic analyses, if included, must only be based on measured and indicated mineral resources.

(d) A registrant's disclosure of mineral reserves under subpart 229.1300 of this part must be based upon a qualified person's pre-feasibility study or feasibility study, each as defined in § 229.1301(d), which supports a determination of mineral reserves. The pre-feasibility or feasibility study must include the qualified person's detailed evaluation of all applicable modifying factors to demonstrate the economic viability of the mining property or project. The technical report summary submitted by the qualified person to support a determination of mineral reserves must describe the procedures, findings and conclusions reached for the pre-feasibility or feasibility study, as required by § 229.601(b)(96). All reserve disclosures based on a pre-feasibility study must include the qualified person's justification for using a pre-feasibility study instead of a final feasibility study.

Instruction 1 to paragraph (d): The term *mineral reserves* does not necessarily require that extraction facilities are in place or operational, that the company has obtained all necessary permits or that the company has entered into sales contracts for the sale of mined products. It does require, however, that the qualified person has, after reasonable investigation, not identified any obstacles to obtaining permits and entering into the necessary sales contracts, and reasonably believes that the chances of obtaining such approvals and contracts in a timely manner are highly likely. In addition, in certain circumstances, it may require the completion of at least a preliminary market study, as defined in § 229.1301(d), in the context of a pre-feasibility study, or a final market study, as defined in § 229.1301(d), in the context of a feasibility study, to support the qualified person's conclusions about the chances of obtaining revenues from sales. For example, a preliminary or final market study would be required where the mine's product cannot be traded on an exchange, there is no other established market for the product, and no sales contract exists. When assessing mineral reserves, the qualified person must take into account the potential adverse impacts, if any, from any unresolved material matter on which extraction is contingent and which is dependent on a third party.

Instruction 2 to paragraph (d): The qualified person must exclude inferred mineral resources from the pre-feasibility study's demonstration of economic viability in support of a disclosure of a mineral reserve.

Instruction 3 to paragraph (d): Factors to be considered in a pre-feasibility study are typically the same as those required for an initial assessment, but considered at a greater level of detail or at a later stage of development. For example, as provided in Table 1 of this subpart, a pre-feasibility study must define, analyze or otherwise address in detail:

i. The required access roads, infrastructure location and plant area, and the source of all utilities (*e.g.*, power and water) required for development and production;

ii. The preferred underground mining method or surface mine pit configuration, with detailed mine layouts drawn for each alternative;

iii. The bench lab tests that have been conducted, the process flow sheet, equipment sizes, and general arrangement that have been completed, and the plant throughput;

iv. The environmental compliance and permitting requirements or interests of agencies, non-governmental organizations, communities and other stakeholders, the baseline studies, and the plans for tailings disposal, reclamation and mitigation, together with an analysis establishing that permitting is possible; and

v. And any other reasonable assumptions, based on appropriate testing, on the modifying factors sufficient to demonstrate that extraction is economically viable.

Instruction 4 to paragraph (d): A pre-feasibility study must include an economic analysis that supports the property's economic viability as assessed by a detailed discounted cash flow analysis or other similar financial analysis. The economic analysis must describe in detail applicable taxes and provide an estimate of revenues. As discussed in Instruction 1 to paragraph (d) of this section, in certain situations, estimates of revenues must be based on at least a preliminary market study.

Instruction 5 to paragraph (d): The pre-feasibility study must also identify sources of uncertainty that require further refinement in a final feasibility study.

Instruction 6 to paragraph (d): Operating and capital cost estimates in a pre-feasibility study must, at a minimum, have an accuracy level of approximately ±25% and a contingency range not exceeding 15%, as provided in Table 1 of this subpart. The qualified person must state the accuracy level and contingency range in the pre-feasibility study.

Instruction 7 to paragraph (d): In some instances, the risk factors associated with a project may indicate that more than a pre-feasibility study is required to disclose mineral reserves, *e.g.*, in situations where the project is the first in a particular mining district with substantially different conditions than existing company projects, such as environmental and permitting restrictions, labor availability and skills, remoteness, and unique mineralization and recovery methods. In such cases, the qualified person must use a feasibility study in order to achieve the level of confidence necessary for disclosing mineral reserves.

Instruction 8 to paragraph (d): A feasibility study must contain the application and description of all relevant modifying factors in a more detailed form and with more certainty than a pre-feasibility study. For example, as provided in Table 1 of this subpart, a feasibility study must define, analyze or otherwise address in detail:

i. Final requirements for site infrastructure, including well-defined access roads, finalized plans for infrastructure location, plant area, and camp or town site, and the established source of all required utilities (*e.g.*, power and water) for development and production;

ii. Finalized mining method, including detailed mine layouts and final development and production plan for the preferred alternative with the required equipment fleet specified. The feasibility study must address detailed mining schedules, construction and production ramp up, and project execution plans;

iii. Completed detailed bench lab tests and a pilot plant test, if required, based on risk. The feasibility study must further address final requirements for process flow sheet, equipment sizes, and general arrangement and specify the final plant throughput;

iv. The final identification and detailed analysis of environmental compliance and permitting requirements, including the finalized interests of agencies, NGOs, communities and other stakeholders. The feasibility study must further address the completion of baseline studies and finalized plans for tailings disposal, reclamation and mitigation; and

v. Detailed assessments of other modifying factors necessary to demonstrate that extraction is economically viable.

Instruction 9 to paragraph (d): A feasibility study must also include an economic analysis that describes taxes in detail, estimates revenues and assesses economic viability by a detailed discounted cash flow analysis. As discussed in Instruction 1 to paragraph (d) of this section, in certain situations, estimates of revenues must be based on a final market study or letters of intent to purchase.

Instruction 10 to paragraph (d): Operating and capital cost estimates in a feasibility study must, at a minimum, have an accuracy level of approximately ±15% and a contingency range not exceeding 10%, as provided by Table 1 of this subpart. The qualified person must state the accuracy level and contingency range in the feasibility study.

Instruction 11 to paragraph (d): If the uncertainties in the results obtained from the application of the modifying factors that prevented a measured mineral resource from being converted to a proven mineral reserve no longer exist, then the qualified person may convert the measured mineral resource to a proven mineral reserve.

Instruction 12 to paragraph (d): The qualified person cannot convert an indicated mineral resource to a proven mineral reserve unless new evidence first justifies conversion to a measured mineral resource.

Instruction 13 to paragraph (d): The qualified person cannot convert an inferred mineral resource to a mineral reserve without first obtaining new evidence that justifies converting it to an indicated or measured mineral resource.

§ 229.1303 (Item 1303) Summary disclosure.

(a)(1) A registrant that has material mining operations, as determined pursuant to § 229.1301, and two or more mining properties, must provide the information specified in paragraph (b) of this section for all properties that the registrant:

(i) Owns or in which it has, or it is probable that it will have, a direct or indirect economic interest;

(ii) Operates, or it is probable that it will operate, under a lease or other legal agreement that grants the registrant ownership or similar rights that authorize it, as principal, to sell or otherwise dispose of the mineral; or

(iii) Has, or it is probable that it will have, an associated royalty or similar right.

(2) A registrant that has material mining operations but only one mining property is not required to provide the information specified in paragraph (b) of this section. That registrant need only provide the disclosure required by § 229.1304 for the mining property that is material to its business.

(b) Disclose the following information for all properties specified in paragraph (a) of this section:

(1) A map or maps, of appropriate scale, showing the locations of all properties. Such maps should be legible on the page when printed.

(2) A presentation in tabular form, in decreasing order by asset value, of the

20 properties with the largest asset value (or fewer if the registrant has an economic interest in fewer than 20 mining properties). For each of the properties required to be included in the presentation, the registrant must identify the property, report the total production from the property for the three most recently completed fiscal years, and disclose the following information, using the format in Table 2 of this subpart:

(i) The location of the property;

(ii) The type and amount of ownership interest;

(iii) The identity of the operator;

(iv) Title, mineral rights, leases or options and acreage involved;

(v) The stage of the property (exploration, development or production);

(vi) Key permit conditions;

(vii) Mine type & mineralization style; and

(viii) Processing plant and other available facilities.

Instruction 1 to paragraph (b)(2): For purposes of this paragraph, a registrant may treat multiple mines with interrelated mining operations as one mining property.

Instruction 2 to paragraph (b)(2): A registrant with only a royalty or similar economic interest should provide only the portion of the production that led to royalty or other incomes for each of the three most recently completed fiscal years.

Table 2 to Subpart 229.1300—Brief Description of the 20 Mining Properties with the Highest Asset Values

Mine or Property	Location	Type and amount of ownership	Operator	Title, mineral rights, leases or options and acreage	Stage[1]	Key permit conditions	Mine type and mineralization style	Processing plant and other facilities	Production for fiscal year ending mm/dd/yy[2]	Production for fiscal year ending mm/dd/yy[2]	Production for fiscal year ending mm/dd/yy[2]
Property 1											
Property 2											
…											
Property 20											
All other properties[3]											

[1] Exploration, development or production

[2] Use these columns to disclose production for the last three fiscal years

[3] State the number of properties that make up the other properties.

(3) A summary of all mineral resources and mineral reserves at the end of the most recently completed fiscal year by commodity and geographic area and for each property containing 10% or more of the registrant's mineral reserves or 10% or more of the registrant's combined measured and indicated mineral resources. This summary must be provided for each class of mineral reserves (probable and proven) and resources (inferred, indicated and measured), together with total mineral reserves and total measured and indicated mineral resources, using the format in Table 3 of this subpart.

Instruction 1 to paragraph (b)(3): The term *by geographic area* means by individual country, regions of a country, state, groups of states, mining district, or other political units, to the extent material to and necessary for an investor's understanding of a registrant's mining operations.

Instruction 2 to paragraph (b)(3): All disclosure of mineral resources must be exclusive of mineral reserves.

Instruction 3 to paragraph (b)(3): All disclosure of mineral resources and reserves must be only for the portion of the resources or reserves attributable to the registrant's interest in the property.

Instruction 4 to paragraph (b)(3): All mineral resource and reserve estimates must be based on long term price that is no higher than the average spot price over the 24-month period prior to the end of the fiscal year covered by the report, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period, unless prices are defined by contractual arrangements.

Instruction 5 to paragraph (b)(3): Mineral resource and reserve estimates called for in Table 3 of this subpart must be in terms of saleable product.

TABLE 3 TO SUBPART 229.1300—SUMMARY MINERAL RESOURCES AND RESERVES AT END OF THE FISCAL YEAR ENDED [DATE] BASED ON [PRICE] [1]

	Proven mineral reserves	Probable mineral reserves	Total mineral reserves	Measured mineral resources	Indicated mineral resources	Measured + indicated mineral resources	Inferred mineral resources
Commodity A							
Geographic area A.							
Geographic area B.							
Mine/Property A.							
Mine/Property B.							
Other mines/properties.							
Other geographic areas.							
Total.							
Commodity B							
Geographic area A.							
Geographic area B.							
Mine/Property A.							
Mine/Property B.							
Other mines/properties.							
Other geographic areas.							
Total.							

[1] Unless prices are defined by contractual arrangements, the registrant must use a commodity price that is no higher than the average spot price during the 24-month period prior to the end of the last fiscal year, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period and must disclose the price used. When prices are defined by contractual agreements, the registrant may use the price set by the contractual arrangement, provided that such price is reasonable, and the registrant discloses that it is using a contractual price and discloses the contractual price used.

§ 229.1304 (Item 1304) Individual property disclosure.

(a) A registrant must disclose the information specified in paragraph (b) of this section for each property that is material to its business or financial condition. When determining the materiality of a property relative to its business or financial condition, a registrant must apply the standards and other considerations specified in § 229.1301(b) to each individual property that it:

(i) Owns or in which it has, or it is probable that it will have, a direct or indirect economic interest;

(ii) Operates, or it is probable that it will operate, under a lease or other legal agreement that grants the registrant ownership or similar rights that authorize it, as principal, to sell or otherwise dispose of the mineral; or

(iii) Has, or it is probable that it will have, an associated royalty or similar right.

(b) Disclose the following information for each material property specified in paragraph (a) of this section:

(1) A brief description of the property including:

(i) The location, accurate to within one mile, using an easily recognizable coordinate system. The registrant must provide appropriate maps, with proper engineering detail (such as scale, orientation, and titles). Such maps must be legible on the page when printed;

(ii) Existing infrastructure including roads, railroads, airports, towns, ports, sources of water, electricity, and personnel; and

(iii) A brief description, including the name or number and size (acreage), of the titles, claims, concessions, mineral rights, leases or options under which the registrant and its subsidiaries have or will have the right to hold or operate the property, and how such rights are obtained at this location, indicating any conditions that the registrant must meet in order to obtain or retain the property. If held by leases or options or if the mineral rights otherwise have termination provisions, the registrant must provide the expiration dates of such leases, options or mineral rights and associated payments.

(iv) If the registrant holds a royalty or similar interest or will have an associated royalty or similar right, the disclosure must describe all of the information in paragraph (b)(1) of this section, including, for example, the documents under which the owner or operator holds or operates the property, the mineral rights held by the owner or operator, conditions required to be met by the owner or operator, and the expiration dates of leases, options and mineral rights. The registrant must also briefly describe the agreement under which the registrant and its subsidiaries have or will have the right to a royalty or similar interest in the property, indicating any conditions that the registrant must meet in order to obtain or retain the royalty or similar interest, and indicating the expiration date.

(2) A brief history of previous operations, including the names of previous operators, insofar as known;

(3) The following information, as relevant to the particular property:

(i) A brief description of the present condition of the property, the work completed by the registrant on the property, the registrant's proposed program of exploration or development, the current stage of the property as exploration, development or production, the current state of exploration or development of the property, and the current production activities. Mines should be identified as either surface or underground, with a brief description of the mining method and processing operations. If the property is without known reserves and the proposed program is exploratory in nature or the registrant has started extraction without determining mineral reserves, the registrant must provide a statement to that effect;

(ii) The age, details as to modernization and physical condition of the equipment, facilities, infrastructure, and underground development; and

(iii) The total cost for or book value of the property and its associated plant and equipment.

Instruction to paragraph (b)(3): A registrant must identify an individual property with no mineral reserves as an exploration stage property, even if it has other properties in development or production. Similarly, a registrant that does not have reserves on any of its properties cannot characterize itself as a development or production stage company, even if it has mineral resources or exploration results, or even if it is engaged in extraction without first disclosing mineral reserves.

(4) A brief description of any significant encumbrances to the property, including current and future permitting requirements and associated timelines, permit conditions, and violations and fines.

(5) A summary of the exploration activity for the most recently completed fiscal year in tabular form, which, for each sampling method used, discloses the number of samples, the total size or length of the samples, and the total number of assays. The information must be presented using the format in Table 4 of this subpart.

TABLE 4 TO SUBPART 229.1300—[INDIVIDUAL PROPERTY NAME]—SUMMARY EXPLORATION ACTIVITY FOR FISCAL YEAR ENDING [DATE]

Sampling methods	Number of samples [1]	Total size or length [2]	Total number of assays
Method 1.			
Method 2.			

[1] This refers to number of drill holes, trenches, geophysical survey lines etc.

[2] This refers to the total length of drill holes, trenches, and geophysical survey lines or total amount of material in bulk sampling.

(6) A summary of material exploration results for the most recently completed fiscal year in tabular form, which, for each property, identifies the hole that generated the exploration results, and describes the length, lithology and key geologic properties of the exploration results. This information must be presented using the format provided in Table 5 of this subpart, and accompanied by a brief discussion of the exploration results' context and relevance.

Instruction to paragraph (b)(6): When determining whether exploration results are material, a registrant should consider their importance in assessing the value of a material property or in deciding whether to develop the property.

TABLE 5 TO SUBPART 229.1300—[INDIVIDUAL PROPERTY NAME]—SUMMARY EXPLORATION RESULTS FOR THE FISCAL YEAR ENDING [DATE] [1]

Hole ID	From	To	Length	Lithology	Geologic property 1	Geologic property 2	. . .	Geologic property n

[1] If only results from selected holes and intersections are included, they should be accompanied with a discussion of the context and justification for excluding other results.

(7) If mineral resources or reserves have been determined, a summary of all mineral resources and reserves, which, for each property, discloses in tabular form, as provided in Table 6 of this subpart, the estimated tonnages, grades (or quality, where appropriate), cut-off grades and metallurgical recovery, by class of mineral resource and reserve, occurring:

(i) In-situ;

(ii) As plant/mill feed; and

(iii) As saleable product.

TABLE 6 TO SUBPART 229.1300—[INDIVIDUAL PROPERTY NAME]—SUMMARY OF [COMMODITY/COMMODITIES] MINERAL RESERVES AND RESOURCES AT THE END OF THE FISCAL YEAR ENDED [DATE] BASED ON [PRICE][1]

	In-situ		*Plant/Mill feed*		*Saleable product*	*Cut-off grades*	*Metallurgical recovery*
	Amount	*Grades/ Qualities*	*Amount*	*Grades/ Qualities*			
Proven mineral reserves.							
Probable mineral reserves.							
Total mineral reserves.							
Measured mineral resources.							
Indicated mineral resources.							
Measured + Indicated mineral resources.							
Inferred mineral resources.							

[1] Unless prices are defined by contractual arrangements, the registrant must use a commodity price that is no higher than the average spot price during the 24-month period prior to the end of the last fiscal year, determined as an unweighted arithmetic average of the daily closing price for each trading day within such period and must disclose the price used. When prices are defined by contractual agreements, the registrant may use the price set by the contractual arrangement, provided that such price is reasonable, and the registrant discloses that it is using a contractual price and discloses the contractual price used.

Instruction 1 to paragraphs (b)(5) through (7): The registrant should not include extensive description of regional geology. Rather, it should include geological information that is brief and relevant to property disclosure.

Instruction 2 to paragraphs (b)(5) through (7): The registrant may modify the tabular formats in Tables 4 through 6 of this subpart for ease of presentation, to add information, or to combine two or more required tables.

Instruction 3 to paragraphs (b)(5) through (7): All disclosure of mineral resources must be exclusive of mineral reserves.

Instruction 4 to paragraphs (b)(5) through (7): A registrant with only a royalty interest should provide only the portion of the resources or reserves that are subject to the royalty or similar agreement.

(8) Provide a comparison in tabular form of the property's mineral resources and reserves as of the end of the last fiscal year against the mineral resources and reserves as of the end of the preceding fiscal year, with an explanation of any material change between the two. The comparison must use the tabular format, as provided in Tables 7 and 8 of this subpart, which discloses information concerning:

(i) The mineral resources or reserves at the end of the last two fiscal years;

(ii) The net difference between the mineral resources or reserves at the end of the last completed fiscal year and the preceding fiscal year, as a percentage of the resources or reserves at the end of the fiscal year preceding the last completed one;

(iii) An explanation of the causes of any discrepancy in mineral resources including depletion or production, changes in commodity prices, additional resources discovered through exploration, and changes due to the methods employed; and

(iv) An explanation of the causes of any discrepancy in mineral reserves including depletion or production, changes in the resource model, changes in commodity prices and operating costs, changes due to the methods employed, and changes due to acquisition or disposal of properties.

TABLE 7 TO SUBPART 229.1300—MINERAL RESOURCE RECONCILIATION (ONLY THE SUM OF MEASURED AND INDICATED RESOURCES SHOULD BE USED IN RECONCILIATION DISCLOSURE)

	Resource at the end of fiscal year ending mm/dd/yy[1]	Resource at the end of fiscal year ending mm/dd/yy[1]	Net Diff. (%)	Causes of discrepancies in resources							
				Depletion or production	Price	Cost	Exploration	Methodology	Acquisition/ disposal	Others	Comments
Ore type 1.											
Ore type 2.											

[1] Use these two columns to disclose resources at the end of each of the last two fiscal years.

TABLE 8 TO SUBPART 229.1300—MINERAL RESERVE RECONCILIATION

	Reserves at the end of fiscal year ending mm/dd/yy[1]	Reserves at the end of fiscal year ending mm/dd/yy[1]	Net Diff. (%)	Causes of discrepancies in reserves							Comments
				Depletion or production	Resource model	Price	Cost	Methodology	Acquisition/ disposal	Others	
Ore type 1.											

TABLE 8 TO SUBPART 229.1300—MINERAL RESERVE RECONCILIATION—Continued

	Reserves at the end of fiscal year ending mm/dd/yy[1]	Reserves at the end of fiscal year ending mm/dd/yy[1]	Net Diff. (%)	Causes of discrepancies in reserves							Comments
				Depletion or production	Resource model	Price	Cost	Methodology	Acquisition/ disposal	Others	
Ore type 2.											

[1] Use these two columns to disclose reserves at the end of each of the last two fiscal years.

(9) If the registrant has not previously disclosed mineral reserve or resource estimates in a filing with the Commission or is disclosing material changes to its previously disclosed mineral reserve or resource estimates, provide a brief discussion of the material assumptions and criteria in the disclosure and cite to corresponding sections of the technical report summary, which must be filed as an exhibit pursuant to § 229.1302(b).

(10) If the registrant has not previously disclosed material exploration results in a filing with the Commission, or is disclosing material changes to its previously disclosed exploration results, it must provide sufficient information to allow for an accurate understanding of the significance of the exploration results. This must include information such as exploration context, type and method of sampling, sampling intervals and methods, relevant sample locations, distribution, dimensions, and relative location of all relevant assay and physical data, data aggregation methods, land tenure status, and any additional material information that may be necessary to make the required disclosure concerning the registrant's exploration results not misleading. The registrant must cite to corresponding sections of the summary technical report, which must be filed as an exhibit pursuant to § 229.1302(b).

Instruction 1 to paragraphs (b)(9) and (10): Whether a change in exploration results, mineral resources, or mineral reserves, is material is based on all facts and circumstances, both quantitative and qualitative.

Instruction 2 to paragraphs (b)(9) and (10): A change in exploration results that significantly alters the potential of the exploration target is considered material.

Instruction 3 to paragraphs (b)(9) and (10): An annual change in total resources or reserves of 10% or more, excluding production as reported in Tables 7 and 8 of this subpart, is presumed to be material.

Instruction 4 to paragraphs (b)(9) and (10): A cumulative change in total resources or reserves of 30% or more in absolute terms, excluding production as reported in Tables 7 and 8 of this subpart, from the current filed technical report summary is presumed to be material.

Instruction 5 to paragraphs (b)(9) and (10): In assessing the presumption of materiality tests, the registrant should consider the change in total resources or reserves on the basis of total tonnage or volume of saleable product.

Instruction 6 to paragraphs (b)(9) and (10): A registrant must also carefully consider whether the filed technical report summary is current with respect to all material assumptions and information, including assumptions relating to all modifying factors and scientific and technical information (*e.g.* sampling data, estimation assumptions and methods). To the extent that the registrant is not filing a technical report summary but instead is basing the required disclosure upon a previously filed report, that report must also be current in these material respects. If the previously filed report is not current in these material respects, the registrant must file a revised or new summary technical report from a qualified person, in compliance with Item 601(b)(96) of Regulation S–K (17 CFR 229.601(b)(96)), that supports the registrant's mining property disclosures.

Instruction 7 to paragraphs (b)(9) and (10): A report containing estimates of the quantity, grade, or metal or mineral content of a deposit or exploration results that a registrant has not verified as a current mineral resource, mineral reserve, or exploration results, and which was prepared before the registrant acquired, or entered into an agreement to acquire, an interest in the property that contains the deposit, is not considered current and cannot be filed in support of disclosure.

§ 229.1305 (Item 1305) Internal controls disclosure.

Describe the internal controls that the registrant uses in its exploration and mineral resource and reserve estimation efforts. This disclosure should include quality control and quality assurance (QC/QA) programs, verification of analytical procedures, and a discussion of comprehensive risk inherent in the estimation.

Instruction to Item 1305: A registrant must provide the internal controls disclosure required by this section whether it is providing the disclosure under § 229.1303, § 229.1304, or under both sections.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 7. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, and Sec. 71003 and Sec. 84001, Pub. L. 114–94, 129 Stat. 1312, unless otherwise noted.

* * * * *

■ 8. Amend Form 1–A (referenced in § 239.90) by:

■ a. Designating the introductory text of Item 8 under Part II as paragraph (a);

■ b. Adding paragraph (b) to Item 8 under Part II;

■ c. Revising the Instruction to Item 8 under Part II;

■ d. Redesignating paragraph (15) as paragraph (16) of Item 17 (Description of Exhibits) under Part III; and

■ e. Adding new paragraph (15) of Item 17 (Description of Exhibits) under Part III.

The additions and revision read as follows:

[Note: The text of Form 1–A does not, and these amendments will not, appear in the Code of Federal Regulations.]

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 1–A
REGULATION A OFFERING STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART II—INFORMATION REQUIRED IN OFFERING CIRCULAR

* * * * *

OFFERING CIRCULAR

* * * * *

Item 8. Description of Property

(a) State briefly the location and general character of any principal plants or other material physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held. Include information regarding the suitability, adequacy, productive capacity and extent of utilization of the properties and facilities used in the issuer's business.

(b) Issuers engaged in mining operations must refer to and, if required, provide the disclosure under Subpart 1300 of Regulation S–K (§§ 229.1301 *et seq.*), in addition to any disclosure required by this Item.

Instruction to Item 8:

Except as required by paragraph (b) of this Item, detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

* * * * *

PART III—EXHIBITS

* * * * *

Item 17. Description of Exhibits

* * * * *

15. *The technical report summary under Item 601(b)(96) of Regulation S–K*—An issuer that is required to file a technical report summary pursuant to Item 1302(b)(2) of Regulation S–K must provide the information specified in Item 601(b)(96) of Regulation S–K as an exhibit to Form 1–A.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; and Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309, unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

■ 10. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Revising the heading "Instruction to Item 4:"

■ b. Adding Instruction 3 to Item 4;

■ c. Removing the Instructions to Item 4.D;

■ d. Adding Instruction 17 to the Instructions as to Exhibits; and

■ e. Reserving paragraphs 18 through 99 under Instructions as to Exhibits.

The revision and additions read as follows:

[Note: The text of Form 20–F does not, and these amendments will not, appear in the Code of Federal Regulations.]

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 20–F

* * * * *

PART I

* * * * *

Instructions to Item 4:

* * * * *

3. Issuers engaged in mining operations must refer to and, if required, provide the disclosure under Subpart 1300 of Regulation S–K (§§ 229.1301 *et seq.* of this chapter).

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

17. The technical report summary under Item 601(b)(96) of Regulation S–K (§ 229.601 of this chapter).

A registrant that is required to file a technical report summary pursuant to Item 1302(b)(2) of Regulation S–K (§ 229.1302(b)(2) of this chapter) must provide the information specified in Item 601(b)(96) of Regulation S–K as an exhibit to its registration statement or annual report on Form 20–F.

18 through 99 [Reserved]

* * * * *

By the Commission.

Dated: June 16, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–14632 Filed 6–24–16; 8:45 am]

BILLING CODE 8011–01–P

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Part III

Commodity Futures Trading Commission

17 CFR Part 45
Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 45

RIN 3038–AE12

Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting final regulations relating to swap data reporting in connection with cleared swaps for swap data repositories ("SDRs"), derivatives clearing organizations ("DCOs"), designated contract markets ("DCMs"), swap execution facilities ("SEFs"), swap dealers ("SDs"), major swap participants ("MSPs"), and swap counterparties who are neither SDs nor MSPs. Commodity Exchange Act ("CEA" or "Act") provisions relating to swap data recordkeeping and reporting were added by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). These regulations adopt without change revisions to the Commission regulations as proposed in the Notice of Proposed Rulemaking ("NPRM") issued August 31, 2015. These revisions clarify regulations to clearly delineate the swap data reporting requirements associated with each of the swaps involved in a cleared swap transaction. Additionally, these revisions leave the choice of SDR for each swap in a cleared swap transaction to the entity submitting the first report on such swap.

DATES: This rule is effective July 27, 2016 except for the removal of § 45.4(b)(2)(ii) which is effective June 27, 2016.

Compliance Date: The compliance date for all revisions and additions to part 45 of the Commission's regulations under this final rule is December 27, 2016. Until such date, all existing reporting obligations under part 45 (other than those contained in removed paragraph (b)(2)(ii) of § 45.4), including existing obligations on reporting continuation data on original swaps and creation and continuation data on clearing swaps, shall remain in effect.

FOR FURTHER INFORMATION CONTACT: Daniel Bucsa, Deputy Director, Division of Market Oversight, 202–418–5435, *dbucsa@cftc.gov;* Andrew Ridenour, Special Counsel, Division of Market Oversight, 202–418–5438, *aridenour@cftc.gov;* Owen J. Kopon, Attorney-Advisor, Division of Market Oversight, 202–418–5360, *okopon@cftc.gov;* Benjamin DeMaria, Special Counsel, Division of Market Oversight, 202–418–5988, *bdemaria@cftc.gov;* Aaron Brodsky, Special Counsel, Division of Market Oversight, 202–418–5349, *abrodsky@cftc.gov;* or Esen Onur, Economist, Office of the Chief Economist, 202–418–6146, *eonur@cftc.gov.*

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I. Background

A. Introduction

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act amended the CEA [2] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: Providing for the registration and comprehensive regulation of SDs and MSPs; imposing clearing and trade execution requirements on standardized derivative products; creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real time reporting; and enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities, intermediaries, and swap counterparties subject to the Commission's oversight.

B. Statutory Authority

To enhance transparency, promote standardization, and reduce systemic risk, section 727 of the Dodd-Frank Act added to the CEA section 2(a)(13)(G),[3] which requires all swaps, whether cleared or uncleared, to be reported to SDRs.[4] SDRs are registered entities created by section 728 of the Dodd-Frank Act to collect and maintain data related to swap transactions as prescribed by the Commission, and to make such data available to the Commission and other regulators.[5] Section 21(b) of the CEA,[6] added by section 728 of the Dodd-Frank Act, directs the Commission to prescribe standards for swap data recordkeeping and reporting, which are to apply to both registered entities and counterparties involved with swaps,[7] and which are to be comparable to standards for clearing organizations in connection with their clearing of swaps.[8]

C. Regulatory History—Final Part 45 Rulemaking

On December 20, 2011, the Commission adopted part 45 of the Commission's regulations ("Final Part 45 Rulemaking").[9] Part 45 implements the requirements of section 21 of the CEA by setting forth the manner and content of reporting to SDRs, and requires electronic reporting both when a swap is initially executed, referred to as "creation" data,[10] and over the course of the swap's existence, referred to as "continuation" data.[11] Additionally, part 45 sets forth varying reporting timeframes depending on the type of reporting, counterparty, execution, or product.[12]

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[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm.*

[2] 7 U.S.C. 1, *et seq.*

[3] 7 U.S.C. 2(a)(13)(G).

[4] *See also* 7 U.S.C. 1a(40)(E), 1a(48).

[5] Regulations governing core principles and registration requirements for, and the duties of, SDRs are the subject of part 49 of this chapter.

[6] 7 U.S.C. 24a(b).

[7] 7 U.S.C. 24a(b)(1)(A).

[8] 7 U.S.C. 24a(b)(3).

[9] *See* Swap Data Recordkeeping and Reporting Requirements, Final Rule, 77 FR 2136 (Jan. 13, 2012).

[10] *See* 17 CFR 45.1 (defining "required swap creation data" as all primary economic terms data for a swap in the swap asset class in question, and all confirmation data for the swap.). "Primary economic terms data" is defined as all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question, while "confirmation data" is defined as all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. *Id.* For cleared swaps, confirmation data also

As part of the Commission's ongoing efforts to improve swap transaction data quality and to improve the Commission's ability to utilize the data for regulatory purposes, Commission staff has continued to evaluate issues in connection with reporting under part 45, including those related to cleared swaps in particular. To this end, Commission staff formed an interdivisional staff working group ("IDWG") to identify, and to recommend resolutions to, reporting challenges associated with certain swaps transaction data recordkeeping and reporting provisions, including the provisions adopted in the Final Part 45 Rulemaking.[13]

Based in large part on those efforts, the Commission published a request for comment on a variety of swap data reporting and recordkeeping provisions to help determine how such provisions were being applied, and to determine whether or what clarifications or enhancements to these provisions may be appropriate (the "IDWG Request for Comment").[14] One of the subjects of the IDWG Request for Comment was the reporting of cleared swaps, and, in particular, the manner in which the swap data reporting rules should address cleared swaps.[15] After considering the comments submitted in response to the IDWG Request for Comment relating to the reporting of cleared swaps,[16] the Commission issued a Notice of Proposed Rulemaking (the "NPRM") in which it proposed changes to part 45 as they relate to the reporting of cleared swaps transactions.[17] In response to the NPRM, the Commission received 17 comments letters addressing its proposed revisions to part 45.[18] This release will address the comments received on specific aspects of the NPRM, and on specific issues raised in the IDWG Request for Comment, in connection with explaining each of the amended regulations adopted herein.[19]

The swap data reporting framework adopted in the original Final Part 45 Rulemaking was largely based on the mechanisms for the trading and execution of uncleared swaps. Under such a regime, swap data reporting was premised upon the existence of one continuous swap for reporting and data representation purposes. The Commission has since had additional opportunities to consult with industry and has observed how the part 45 regulations function in practice with respect to swaps that are cleared, including how the implementation of part 45 interacts with the implementation of part 39 of the Commission's regulations, which contains provisions applicable to DCOs.

In particular, § 39.12(b)(6) provides that upon acceptance of a swap by a DCO for clearing, that original swap is extinguished and replaced by equal and opposite swaps, with the DCO as the counterparty to each resulting swap.[20] The original swap that is extinguished upon acceptance for clearing is commonly referred to by market participants as the "alpha" swap and the equal and opposite swaps that replace the original swap are commonly referred to as "beta" and "gamma" swaps. The process of extinguishing the "alpha" swap and creating the "beta" and "gamma" swaps is generally referred to as a novation. The Commission has observed that certain provisions of part 45 could better accommodate the cleared swap framework set forth in § 39.12(b)(6). The new regulations in this release are intended to provide clarity to swap counterparties and registered entities of their part 45 reporting obligations with respect to the swaps involved in a cleared swap transaction. These amendments and new regulations are also intended to improve the efficiency of data collection and maintenance associated with the reporting of the

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includes the internal identifiers assigned by the automated systems of the DCO to the two transactions resulting from novation to the clearing house. *Id. See also* 17 CFR 45.3.

[11] *See* 17 CFR 45.1 (defining "required swap continuation data" as all of the data elements that must be reported during the existence of a swap to ensure that all data concerning the swap in the swap data repository remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap). *See also* 17 CFR 45.4.

[12] *See* 17 CFR 45.3(a), 45.3(b), 45.3(c), and 45.3(d).

[13] *See* Press Release, CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting (Jan. 21, 2014), available at *http://www.cftc.gov/PressRoom/PressReleases/pr6837-14*.

[14] *See* Review of Swap Data Recordkeeping and Reporting Requirements, Request for Comment, 79 FR 16689 (Mar. 26, 2014). The IDWG Request for Comment was referred to simply as the "Request for Comment" in the NPRM. The Commission has changed the short form citation for that document in the final release to distinguish it from the subsequent request for comment related to draft technical specifications, referenced throughout this release.

[15] 79 FR 16689, 16694.

[16] The comment file for responses to the IDWG Request for Comment is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1484*. Commenters responding to the IDWG Request for Comment included: The American Gas Association, May 27, 2014; American Petroleum Institute, May 27, 2014; Americans for Financial Reform, May 27, 2014 ("AFR"); Australian Bankers' Association, May 27, 2014 ("ABA"); Better Markets, Inc., May 27, 2014, ("Better Markets"); B&F Capital Markets, Inc., May 27, 2014; CME Group, May 27, 2014 ("CME"); Coalition for Derivatives End-Users, May 27, 2014 ("CDEU"); Coalition of Physical Energy Companies, May 27, 2014; Commercial Energy Working Group, May 27, 2014 ("CEWG"); Commodity Markets Council, May 27, 2014 ("CMC"); The Depository Trust & Clearing Corporation, May 27, 2014 ("DTCC"); EDF Trading North America, LLC, May 27, 2014; Edison Electric Institute, May 27, 2014 ("EEI"); Financial InterGroup Holdings Ltd, May 27, 2014; Financial Services Roundtable ("FSR"), May 27, 2014; Fix Trading Community, May 27, 2014; The Global Foreign Exchange Division of the Global Financial Markets Association, May 27, 2014 ("GFMA"); HSBC, May 27, 2014; Interactive Data Corporation, May 27, 2014; ICE Trade Vault, LLC, May 27, 2014 ("ITV"); International Energy Credit Association, May 27, 2014; International Swaps and Derivatives Association, Inc., May 23, 2014 ("ISDA"); Japanese Bankers Association, May 27, 2014 ("JBA"); Just Energy Group Inc., May 27, 2014; LCH.Clearnet Group Limited, May 29, 2014 ("LCH"); Managed Funds Association, May 27, 2014 ("MFA"); Markit, May 27, 2014; Natural Gas Supply Association, May 27, 2014 ("NGSA"); NFP Electric Associations (National Rural Electric Cooperative Association, American Public Power Association, and Large Public Power Council), May 27, 2014 ("NFPEA"); OTC Clearing Hong Kong Limited, May 27, 2014 ("OTC Hong Kong"); Securities Industry and Financial Markets Association Asset Management Group, May 27, 2014 ("SIFMA"); SWIFT, May 27, 2014; Swiss Re, May 27, 2014; Thomson Reuters (SEF) LLC, May 27, 2014 ("TR SEF"); and TriOptima, May 27, 2014. Discussions of comments on reporting of cleared swaps received in response to the IDWG Request for Comment are included in the preamble to the NPRM.

[17] *See* Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, Notice of Proposed Rulemaking, 80 FR 52544 (Aug. 31, 2015).

[18] The comment file for responses to the NPRM is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1614*. Commenters to the NPRM included: Better Markets, October 30, 2015; CME, October 30, 2015; COPE, October 30, 2015; CEWG, October 30, 2015; CMC, October 30, 2015; DTCC, October 30, 2015; EEI/EPSA, October 30, 2015; Eurex Clearing AG ("Eurex"); FSR, October 30, 2015; ITV, October 30, 2015; ISDA, October 30, 2015; JBA, October 30, 2015; LCH, October 30, 2015; MFA and Alternative Investment Management Association ("AIMA"), October 30, 2015; Markit, October 30, 2015; and North American Derivatives Exchange, Inc., October 30, 2015 ("Nadex").

[19] Unless otherwise noted, references to "commenters" throughout this release refer to those who submitted comment letters to the NPRM.

[20] *See* 17 CFR 39.12(b)(6) (requiring a DCO that clears swaps to have rules providing that, upon acceptance of a swap by the DCO for clearing: (i) The original swap is extinguished; (ii) the original swap is replaced by an equal and opposite swap between the [DCO] and each clearing member acting as principal for a house trading or acting as agent for a customer trade). The Commission reaffirmed its position regarding the composition of a cleared swap in a statement regarding Chicago Mercantile Exchange ("CME") Rule 1001. *See* Statement of the Commission on the Approval of CME Rule 1001 (Mar. 6, 2013), at 6, *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf*.

swaps involved in a cleared swap transaction.

D. Consultation With Other U.S. Financial Regulators

In developing these rules, Commission staff has engaged in extensive consultations with other U.S. financial regulators, including the Securities and Exchange Commission ("SEC"), the Federal Reserve Board of Governors, the Federal Housing Finance Agency, the Federal Deposit Insurance Corporation, Office of Comptroller of the Currency, and the Farm Credit Administration. As noted in the NPRM,[21] the Commission endeavored to harmonize the regulations in this release with the approach proposed by the SEC in its release proposing certain new rules and rule amendments to Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information ("Regulation SBSR").[22]

E. Summary of Revisions and Additions to Part 45

The Commission is making revisions and additions to §§ 45.1, 45.3, 45.4, 45.5, 45.8, 45.10, and appendix 1 to part 45 in order to provide clarity to swap counterparties as well as to registered entities regarding their respective part 45 reporting obligations in connection with each of the swaps involved in a cleared swap transaction.[23] The Commission is adopting the following amendments, each of which is discussed in greater detail in Section II of this release:

- Amendments to § 45.1 revise the definition of "derivatives clearing organization" to update a cross-reference and to clarify that the definition covers only registered DCOs. Revised § 45.1 also adds new definitions for "original swaps" and "clearing swaps." These terms are used throughout amended part 45 to help clarify reporting obligations for the swaps involved in a cleared swap transaction.
- Amendments to § 45.3 modify and clarify DCO creation data reporting obligations for swaps that result from the clearing process; establish which entity has the obligation to choose the SDR to which creation data is reported; eliminate confirmation data reporting obligations for swaps that are intended to be submitted to a DCO for clearing at the time of execution; and make conforming changes.
- Amendments to § 45.4 modify and clarify continuation data reporting obligations for original swaps, including the obligation of a clearing DCO to report original swap terminations to the SDR to which the original swap was reported; modify and clarify the obligation to report data providing for the linking of original and clearing swaps and the original and clearing swap SDRs; remove the requirement for SD/MSP reporting counterparties to report daily valuation data for cleared swaps; and make conforming changes.
- Amendments to § 45.5 set forth a DCO's obligations to create, transmit, and use unique swap identifiers ("USIs") to identify clearing swaps.
- Amendments to § 45.8 provide that the DCO will be the reporting counterparty for clearing swaps.
- Amendments to § 45.10 provide that all swap data for a given clearing swap, and all swap data for each clearing swap that replaces a particular original swap (and each equal and offsetting clearing swap that is created upon execution of the same transaction and that does not replace an original swap), must be reported to a single SDR. Amendments also make conforming changes.
- Amendments to appendix 1 modify certain existing primary economic term ("PET") data fields and certain explanatory notes in the Comment sections for existing PET data fields, and add several new PET data fields to account for the clarifications provided in this release for the reporting of clearing swaps.

II. Revised and New Regulations

Throughout Section II of this release, the Commission will discuss each amendment and the related comments. The Commission is also including several examples to demonstrate how cleared swap reporting workflows would function under the new regulations.

The Commission received some general comments on the proposed amendments to part 45 relating to data quality. Better Markets was generally supportive of the proposals, and commented that the NPRM integrated many of the technical public comments on the concept release to address the small but important fixes on reporting of cleared swap transactions.[24] COPE was also generally supportive of the NPRM on the "guiding principal" that end-users should not be unduly burdened by the Commission's swap reporting regulations.[25] COPE requested that the Commission clarify that, under the proposed amendments, end-users would not have reporting obligations on swaps executed pursuant to the rules of a SEF or DCM and then cleared by a DCO.[26]

A. Definitions—Amendments to § 45.1

1. Existing § 45.1

Existing § 45.1 defines "derivatives clearing organization" for purposes of part 45 by cross-referencing section 1a(9) of the CEA[27] and any Commission regulations implementing that section, including but not limited to § 39.5. Existing § 45.1 does not include definitions of either "original swap" or "clearing swap."

2. Proposed Amendments and Additions to § 45.1

i. "Derivatives Clearing Organization"

The Commission proposed to revise the definition of "derivatives clearing organization" in § 45.1 so that it cross-references the definition provided in § 1.3(d) of the Commission's regulations and so that it explicitly refers to a DCO registered with the Commission under section 5b(a) of the CEA.[28] This modification redefines a "derivatives clearing organization" for purposes of part 45 to mean a derivatives clearing organization, as defined by § 1.3(d) of this chapter, that is registered with the Commission.[29]

ii. "Original Swap" and "Clearing Swap"

The Commission proposed to add definitions of "original swap" and "clearing swap" to part 45 so that the part 45 reporting rules will be more consistent with the regulations applicable to DCOs set forth in § 39.12(b)(6).[30]

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[21] 80 FR 52544, 52545–46.

[22] *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015).

[23] The Commission is also amending the part 45 authority citation to replace a reference to 7 U.S.C. 24 with a reference to 7 U.S.C. 24a.

[24] *See* Better Markets Oct. 30, 2015 Letter, at 2.

[25] *See* COPE Oct. 30, 2015 Letter, at 2.

[26] *See* COPE Oct. 30, 2015 Letter, at 2. In response to COPE's request for clarification, the Commission notes that under the final rule being adopted, a non-SD/MSP would likely have no reporting obligations on a swap executed on a SEF or DCM that is intended to be cleared at the time of execution. However, the original swap reporting counterparty as determined by the reporting hierarchy under § 45.8 could have obligations to report any amendments or modifications of PET data fields, as well as any continuation data on a swap between the execution of the swap and its acceptance for clearing, such as a novation, allocation or termination. In such circumstances, the reporting counterparty on the original swap would have a reporting obligation under either § 45.3 or § 45.4, respectively. Separately, end-users may also have obligations to correct errors or omissions discovered in swap data for which the end-user is the reporting counterparty pursuant to § 45.14(a), or to notify the reporting counterparty of such errors or omissions if the end-user is not the reporting counterparty pursuant to § 45.14(b).

[27] 7 U.S.C. 1a(9).

[28] 7 U.S.C. 7a–1(a).

[29] *See* 80 FR 52544, 52547.

The Commission proposed to define "original swap" as a swap that has been accepted for clearing by a derivatives clearing organization and "clearing swap" as a swap created pursuant to the rules of a derivatives clearing organization that has a derivatives clearing organization as a counterparty, including any swap that replaces an original swap that was extinguished upon acceptance of such original swap by the derivatives clearing organization for clearing.

As noted above, while original swaps are commonly referred to as "alpha" swaps and while the equal and opposite swaps that replace the original swap are commonly referred to as "beta" and "gamma" swaps, the Commission will use the proposed defined terms "original swap" and "clearing swap" throughout this section of the release.

3. Comments

The Commission received comments on the proposed definitions from a variety of market participants. Many commenters were supportive of the proposed amendments to the definitions and the clarification that they provide. Other commenters supported clarification of the definitions, but suggested further modifications to the proposed definitions.

i. Derivatives Clearing Organization

Both ISDA and FSR commented that the proposed definition of "derivatives clearing organization" should be expanded to include derivatives clearing organizations that are exempt from registering with the Commission.[31] These commenters suggested that the reporting obligations should apply to the central counterparty regardless of whether that counterparty is registered with the Commission. ISDA also commented that the reporting obligations should apply to those derivatives clearing organizations that are currently in the process of registering with the Commission.[32]

ii. Clearing Swap

With respect to the proposed definition of "clearing swap," ISDA reiterated its comment that the definition should include all swaps that are cleared through registered derivatives clearing organizations as well as those that are cleared through derivatives clearing organizations that are in the process of registering or are exempt from registration.[33] LCH commented that the definition of clearing swap is incomplete as it may not capture cleared trades between a clearing member and its client in a principal clearing model, because the DCO is not a party to that transaction.[34]

iii. Original Swap

Regarding the definition of "original swap," ISDA commented that it is supportive of the proposed definition and agrees that swaps submitted for clearing should be classified as original swaps.[35] LCH commented that the definition of original swap is sufficiently clear and complete.[36] ISDA requested clarification on guidance issued by the Commission's Divisions of Clearing and Risk and Market Oversight,[37] specifically as to whether there is an original swap associated with CDS Clearing-Related Swaps that are created through a firm or forced trade process.[38] EEI/EPSA sought clarification from the Commission that the definition of original swap includes both off-facility swaps that are submitted for clearing, rejected, then resubmitted and accepted for clearing, and swaps that are not intended to be cleared when executed but are cleared at some point subsequent to execution.[39]

4. Final Rule

Having reviewed all relevant comments, the Commission has determined to adopt the definitions as proposed in the NPRM. The Commission has noted the comments received from market participants on the limitation of "derivatives clearing organization" to DCOs registered with the Commission. The Commission notes that, as of the date of this release, it has granted exemptive relief to four non-U.S. central counterparties from registering as a DCO with the Commission, under section 5b(h) of the CEA, pursuant to Commission Orders ("DCO Exemptive Orders").[40] The DCO Exemptive Orders include reporting obligations that are consistent with those imposed on registered DCOs under amended part 45.[41] Therefore, the Commission believes that it is sufficient for the obligations on derivatives clearing organizations in part 45 to apply only to registered DCOs and, as a result, the definition of "derivatives clearing organization" under amended regulation 45.1 will cover only registered DCOs, as proposed.

The Commission notes general support for the definition of "clearing swap." The Commission notes that the newly-defined term "clearing swap" would include any swap to which the DCO is a counterparty, regardless of whether such swap is replacing an original swap.[42] While a cleared swap transaction generally comprises an original swap that is terminated upon novation and the equal and opposite swaps that replace it, the Commission is aware of certain circumstances in which a cleared swap transaction may not involve the replacement of an original swap.[43] Accordingly, the revised definition of "clearing swap" is intended to encompass: (1) Swaps to which the DCO is a counterparty and that replace an original swap (*i.e.*, swaps commonly known as betas and gammas) and (2) all other swaps to which the DCO is a counterparty (even if such swap does not replace an original swap).

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[30] *See* 80 FR 52544, 52547.

[31] *See* ISDA Oct. 30, 2015 Letter, at 2–3; FSR Oct. 30, 2015 Letter, at 5.

[32] *See* ISDA Oct. 30, 2015 Letter, at 2–3.

[33] *See Id.* at 3.

[34] *See* LCH Oct. 30, 2015 Letter, at 2.

[35] *See* ISDA Oct. 30, 2015 Letter, at 3.

[36] *See* LCH Oct. 30, 2015 Letter, at 2.

[37] *See* CFTC Letter No. 15–51 (Sept. 18, 2015).

[38] ISDA also commented that it is not clear whether the associated clearing swaps are publicly reportable swap transactions for Part 43 purposes. *See* ISDA Oct. 30, 2015 Letter, at 3.

[39] *See* EEI/EPSA Oct. 30, 2015 Letter, at 3.

[40] As of the date of this final release, the Commission has issued DCO Exemptive Orders to ASX Clear (Futures) Pty Ltd. ("ASX"), Japan Securities Clearing Corp., Korea Exchange Inc., and OTC Clear Hong Kong Ltd. ("OTC Clear"). The Commission amended ASX's DCO Exemptive Order on January 28, 2016 to require ASX to report the termination of any swap accepted for clearing by ASX to the SDR to which the original swap was reported.

[41] The Commission also notes ISDA's comment concerning entities that are in the process of registering as a DCO. Because there is no temporary or provisional registration of DCOs, such entities should not be entering into swaps that must be reported under part 45 without full registration.

[42] The Commission has noted LCH's request for guidance concerning reporting clearing swaps under the principal model of clearing more commonly used outside of the United States. The Commission declines to include such guidance at this time, but would note that this issue of reporting principal versus agency model clearing swaps is under consideration as part of the Technical Specifications Request for Comment issued by the Commission's Office of Data and Technology and the Division of Market Oversight on December 22, 2015 relating to draft technical specifications for certain swap data elements ("Technical Specifications Request for Comment"). *See* Draft Technical Specifications for Certain Swap Data Elements, Request for Comment (Dec. 22, 2015), available at *http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf.*

[43] For example, in the preamble to the part 39 adopting release, the Commission noted that "open offer" systems are acceptable under § 39.12(b)(6), stating that: Effectively, under an open offer system there is no "original" swap between executing parties that needs to be novated; the swap that is created upon execution is between the DCO and the clearing member, acting either as principal or agent. Derivatives Clearing Organization General Provisions and Core Principles, Final Rule 76 FR 69334, 69361 (Nov. 8, 2011).

The Commission also notes the broad support for the newly-defined term "original swap."[44] In addressing ISDA's request for clarification on firm or forced trades at the DCO, the Commission notes that guidance from its Divisions of Clearing and Risk and Market Oversight states that swaps arising out of a DCO's firm or forced trade process would constitute "clearing swaps."[45] The Divisions' guidance also states that DCOs should be the reporting counterparty of such swaps.

The proposed definition of original swap will provide clarity with respect to certain continuation data reporting requirements for such swaps by tying such obligations to a specific point in time in the life of a swap that is either intended to be submitted to a DCO for clearing at the time of execution, or that is not intended to be cleared at the time of execution but is later submitted to a DCO for clearing. The Commission notes that under the proposed definition, a swap that is submitted to a DCO for clearing can become an original swap by virtue of the DCO's acceptance of such swap for clearing, irrespective of: (1) Whether such swap is executed on or pursuant to the rules of a SEF or DCM or off-facility; (2) whether or not such swap is subject to the clearing requirement; and (3) whether such swap is intended to be cleared at the time of execution or not intended to be cleared at the time of execution, but subsequently submitted to a DCO for clearing.[46]

In addressing EEI/EPSA's comment on whether the term "original swaps" would include off-facility swaps rejected and then resubmitted for clearing, or swaps not intended to be cleared at execution but subsequently submitted for clearing, the Commission notes that a swap becomes an "original swap" once it is accepted for clearing by a DCO. The definition would apply regardless of whether the swap had previously been rejected for clearing, or whether it was not intended to be cleared at the time of execution.

B. Swap Data Reporting: Creation Data—Amendments to § 45.3

1. Existing § 45.3

Regulation 45.3 requires reporting to an SDR of two types of "creation data" generated in connection with a swap's creation: "primary economic terms data" ("PET data") and "confirmation data." Additionally, § 45.3 governs what creation data must be reported, who must report it, and deadlines for its reporting.

The swap data reporting requirements under § 45.3 concerning both PET data and confirmation data differ for reporting counterparties and entities depending on whether the swap is executed on or pursuant to the rules of a SEF or DCM (§ 45.3(a)), is subject to mandatory clearing and executed off-facility (§ 45.3(b)), or is not subject to mandatory clearing and executed off-facility (§ 45.3(c) and (d)). Regulation 45.3 also addresses specific creation data reporting requirements in circumstances where a swap is accepted for clearing by a DCO,[47] including the excusal of the reporting counterparty from reporting creation data in certain circumstances.[48]

2. Proposed Amendments to § 45.3

As noted above, the Commission has observed how the part 45 regulations function in practice with respect to swaps that are cleared. While CEA section 2(a)(13)(G) requires each swap (whether cleared or uncleared) to be reported to a registered SDR, the Commission believes that the interplay between the § 45.3 reporting requirements applicable to SEFs, DCMs and reporting counterparties, and the reporting requirements applicable to DCOs, should be clarified in the context of a cleared swap transaction. Accordingly, the Commission proposed several amendments to § 45.3 to better delineate the creation data reporting requirements associated with each swap involved in a cleared swap transaction.

i. Proposed Revised References to Clearing Requirement Exceptions and Exemptions

References to the end-user exception to the swap clearing requirement set forth in section 2(h)(7) of the CEA are included in existing §§ 45.3 and 45.8. Following the publication of the Final Part 45 Rulemaking, the Commission codified the end-user exception in § 50.50 and published two exemptions to the swap clearing requirement: The inter-affiliate exemption in § 50.52, and the financial cooperative exemption in § 50.51. Therefore, the Commission proposed revisions to the introductory language of § 45.3, §§ 45.3(b)–(d), and 45.8(h)(1)(vi) to reflect that exceptions to, and exemptions from, the clearing requirement are now codified in part 50 of the Commission's regulations.[49]

ii. Proposed Addition of § 45.3(e)—Clearing Swaps

Paragraphs (a)–(d) of § 45.3 govern creation data reporting in connection with swaps executed on or pursuant to the rules of a SEF or DCM and for off-facility swaps, but do not separately address creation data reporting for swaps created through the clearing process by a DCO (*i.e.*, clearing swaps). Accordingly, the Commission proposed renumbering existing paragraph (e) (Allocations) of § 45.3 as paragraph (f), and adding new paragraph (e) to § 45.3, which will exclusively govern creation data reporting requirements for clearing swaps. The Commission also proposed revising the introductory language of § 45.3 to clarify that paragraphs (a)–(d) apply to all swaps except clearing swaps, while paragraph (e) applies to clearing swaps.[50] The Commission did not propose to change the existing requirements for who reports creation data for those swaps that become original swaps. Creation data for such swaps will continue to be reported by the reporting counterparty, as determined pursuant to § 45.8, or by the SEF/DCM in the case of on-facility swaps.

Under the proposed revisions to § 45.3(e), a DCO would be required as reporting counterparty under new § 45.8(i)[51] to report all required swap creation data for each clearing swap, either as soon as technologically practicable after an original swap is accepted by the DCO for clearing (in the event that the clearing swap replaced an original swap), or as soon as technologically practicable after execution of a clearing swap (in the event that the clearing swap does not replace an original swap). Additionally, under the proposed revisions to § 45.3(e), required swap creation data for clearing swaps must be provided to a registered SDR electronically by the DCO and must include all PET data and all confirmation data for each clearing swap.

As noted above, CEA section 2(a)(13)(G)[52] requires each swap

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[44] *See* ISDA Oct. 30, 2015 Letter, at 3; LCH Oct. 30, 2015 Letter, at 2.

[45] CFTC Letter No. 15–51 (Sept. 18, 2015).

[46] *See* 17 CFR 39.12(b)(6). Clearing swaps would not be executed on or pursuant to the rules of a SEF or DCM as such swaps are created pursuant to the rules of a DCO.

[47] *See* 17 CFR 45.3(a)(2), (b)(2), (c)(1)(ii), (c)(2)(ii), and (d)(2).

[48] *See* 17 CFR 45.3(b)(1), (c)(1)(i), (c)(2)(i), and (d)(1).

[49] *See* 80 FR 52544, 52548.

[50] *See* 80 FR 52544, 52548–49.

[51] The Commission proposed adding § 45.8(i), which establishes the DCO as the reporting counterparty for all clearing swaps. This change is discussed in greater detail in Section II.E. of this release. The Commission also proposed conforming amendments to § 45.4(b)(1) and (2) to add the phrase "as reporting counterparty" after "derivatives clearing organization" to make clear that the DCO will be the reporting counterparty for purposes of those provisions. *See* Section II.C.

[52] 7 U.S.C. 2(a)(13)(G).

(whether cleared or uncleared) to be reported to a registered SDR. Proposed revisions to paragraphs (a)–(d) and new paragraph (e) of § 45.3 will thus cover creation data reporting requirements for all swaps: Revised § 45.3(a) applies to each swap executed on or pursuant to the rules of a SEF or DCM, revised § 45.3(b)–(d) applies to "all off-facility swaps," and proposed new § 45.3(e) would apply to clearing swaps. The proposed amendments to § 45.3(a)–(d) would thus exclude clearing swaps. Under the proposed amendments to § 45.3, a SEF/DCM or counterparty other than the DCO will not have swap data reporting obligations with respect to clearing swaps. Additionally, revised § 45.3(a)–(d) will govern the creation data reporting requirements for swaps, including swaps commonly known as "alpha" swaps, regardless of whether they later become original swaps by virtue of their acceptance for clearing.[53]

iii. Proposed Removal of Provisions

As noted above, several provisions of existing § 45.3 impose certain creation data reporting requirements on a DCO in circumstances where a swap is accepted for clearing by a DCO. To ensure consistency with § 39.12(b)(6), the Commission proposed to remove these creation data reporting provisions (current §§ 45.3(a)(2),[54] (b)(2), (c)(1)(ii), (c)(2)(ii), and (d)(2)), and replacing them with new proposed § 45.3(e), as described above.[55]

Additionally, the Commission proposed to remove portions of §§ 45.3(b)(1), (c)(1)(i), (c)(2)(i), and (d)(1).[56] Previously, where both a DCO and reporting counterparty had obligations under § 45.3 for reporting creation data for the same swap, the reporting counterparty would be excused from reporting creation data if the swap is accepted for clearing before any PET data is reported by the reporting counterparty. Under the proposed regulation, these excusal provisions are no longer necessary because the proposed rules require DCOs to report creation data only for clearing swaps, and not for swaps accepted for clearing (*i.e.*, original swaps).

iv. Proposed Removal of Certain Confirmation Data Reporting Requirements

Existing §§ 45.3(a)–(d) requires the SEF/DCM (under § 45.3(a)) or the reporting counterparty (under §§ 45.3(b)–(d)) to report both PET and confirmation data in order to comply with creation data reporting obligations. The Commission believes that the confirmation data requirements for clearing swaps in new § 45.3(e) will provide the Commission with a sufficient representation of the confirmation data for a cleared swap transaction, because the original swap is extinguished upon acceptance for clearing and replaced by equal and opposite clearing swaps.

Accordingly, for swaps that are intended to be submitted to a DCO for clearing at the time of execution, the Commission proposed to amend §§ 45.3(a), (b), (c)(1)(iii), (c)(2)(iii), and (d)(2) to remove the existing confirmation data reporting requirements.[57]

v. Proposed Revisions to § 45.3(f)—Allocations

The Commission proposed renumbering existing § 45.3(e), which governs creation data reporting for swaps involving allocation, as § 45.3(f).[58] The Commission also proposed replacing the phrase "original swap transaction" in §§ 45.3(f)(2) and 45.8(h)(1)(vii)(D), and in the PET data tables found in appendix 1 to part 45, with "initial swap transaction" to avoid confusion with the term "original swap," which is defined in § 45.1.[59]

vi. Proposed Addition of § 45.3(j): Choice of SDR

The Commission proposed adding § 45.3(j) in order to explicitly establish which entity has the obligation to choose the SDR to which the required swap creation data is reported.[60] New § 45.3(j) provides that: For swaps executed on or pursuant to the rules of a SEF or DCM (including swaps that may later become original swaps), the SEF or DCM has the obligation to choose the SDR; for all other swaps (including off-facility swaps and/or clearing swaps) the reporting counterparty (as determined in § 45.8) will have the obligation to choose the SDR.[61]

Under the proposed addition of § 45.3(j) and the proposed revisions to § 45.10,[62] the entity with the obligation to report the initial required swap creation data will select the SDR to which all subsequent swap creation and continuation data for that swap will be reported by choosing the SDR to which such initial required swap creation data is reported. Thereafter, all required swap creation data and all required swap continuation data for a given swap will be reported to the same SDR used by the registered entity or counterparty.[63]

Finally, the Commission notes that it is aware of certain situations wherein SEFs, DCMs and reporting counterparties for off-facility swap transactions may report the part 43 data for a swap to an SDR prior to reporting the part 45 required creation data for the same swap. In such situations, the registered entity or reporting counterparty has effectively chosen the SDR for the swap prior to submitting the part 45 data, since, pursuant to revisions to § 45.10 adopted in this release, all swap data reported pursuant to parts 43 and 45 for a given swap is required to be reported to a single SDR.[64] For example, if a swap is executed on or pursuant to the rules of SEF A, and SEF A immediately upon execution reports the part 43 data to SDR B, prior to reporting part 45 data, SEF A has effectively chosen SDR B as the SDR for all required creation data for the swap, because revised § 45.10 requires that all part 43 and 45 swap data for a given swap must be reported to a single SDR.[65] Accordingly, in this example, part 45 required creation data must be reported to SDR B.

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[53] Swaps created by a DCO under § 39.12(b)(6) are a type of clearing swap as defined in this release, and thus could not be executed on or pursuant to the rules of a SEF or DCM. Additionally, a DCO would not report creation data for a swap that was executed on or pursuant to the rules of a SEF or DCM, or for an off-facility swap that is submitted to the DCO for clearing, because, under § 45.3(a)–(d), the SEF/DCM or reporting counterparty would be responsible for reporting creation data for such swaps after execution. Under the revisions to § 45.3, a DCO will not have creation data reporting obligations for swaps that are not clearing swaps. The Commission notes that the revisions to § 45.3 in this release are consistent with the prior no action relief and guidance issued by Commission staff relating to firm or forced trades at DCOs. *See* CFTC Letter No. 15–51 (Sept. 18, 2015); CFTC No-Action Letter No. 14–119 (Sept. 29, 2014).

[54] The Commission is also renumbering § 45.3(a)(1) as § 45.3(a).

[55] *See* 80 FR 52544, 52548–49.

[56] *See* 80 FR 52544, 52549.

[57] *See* 80 FR 52544, 52549–50.

[58] The Commission also proposed renumbering § 45.3 paragraphs (f), (g), and (h) as paragraphs (g), (h), and (i), respectively.

[59] *See* 80 FR 52544, 52550.

[60] *See* 80 FR 52544, 52550.

[61] Regulation 45.3(j) generally reflects the language included in the preamble to the original Final Part 45 Rulemaking, which provides that the SEF or DCM would select the SDR for platform-executed swaps, and the reporting counterparty would choose the SDR for off-facility swaps. *See* 77 FR 2136, 2146 (Jan. 13, 2012). Under the new rule, the DCO will have the obligation to choose the SDR for clearing swaps.

[62] Revisions to § 45.10 are discussed in Section II.F below. As will be discussed in Section II.F below, by operation of § 45.10, DCOs will be obligated to report all required continuation data for original swaps to the registered SDR (as selected by the SEF, DCM, or reporting counterparty pursuant to proposed § 45.3(j)) to which required creation data for the swap was reported pursuant to §§ 45.3(a)–(d).

[63] *See Proposed* § 45.10. *See also* Section II.F.2, *infra*.

[64] *Id.*

[65] *Id.*

vii. Proposed Removal of Expired Compliance Date References

The Commission proposed to remove the references to the expired compliance dates in §§ 45.3(b)(1)(i), (b)(1)(ii), (b)(2), (b)(2)(ii), (c)(1)(i)(A), (c)(1)(i)(B), (c)(2)(i)(A), (c)(2)(i)(B), (d)(1), and (d)(3), and in the introductory language to § 45.3.[66] These references to phase-in compliance dates are no longer necessary as they have expired.

3. Comments

The Commission received a number of comments in response to its proposed revisions to § 45.3. Many of these comments focused on the proposed reporting of creation data associated with clearing swaps and related reporting obligations concerning original swaps. Other comments addressed the new choice of SDR provision set out in § 45.3(j). And, finally, some commenters discussed the new clearing swaps rules in the context of principal model clearing.[67]

i. Creation Data Reporting for Clearing Swaps

With respect to the reporting of clearing swaps, commenters generally supported the Commission's proposal to require DCOs to report creation data for clearing swaps.[68] FSR and CMC agreed that the DCO is in the best position to report creation data for clearing swaps.[69] ISDA,[70] DTCC, and LCH also noted support for requiring DCOs to report data for clearing swaps.[71] CME likewise supported the requirement for DCOs to report creation data for clearing swaps, recommending that the DCO be assigned all reporting obligations for original and clearing swaps.[72] Markit recommended an alternative approach whereby the reporting counterparty to the original swap would be permitted to choose whether it reports creation data for the clearing swaps, while allowing the reporting counterparty to delegate the reporting responsibilities to a DCO.[73]

LCH requested that the Commission change references to "execution of a clearing swap" in proposed § 45.3(e) to "creation of a clearing swap" in order to more clearly address compression events. LCH also suggested cross-referencing re-numbered § 45.3(f) to new § 45.3(e), to cover situations where block trades are allocated post-clearing.[74]

ii. Removal of Confirmation Data Reporting Requirements for Intended To Be Cleared Swaps

With respect to swaps that become original swaps, commenters were generally supportive of the Commission's proposal to eliminate the requirement for reporting confirmation data on intended to be cleared swaps.[75] FSR commented that the reporting of confirmation data for clearing swaps should provide sufficient confirmation data for a cleared swap transaction.[76] Markit, on the other hand, commented that eliminating the requirement for reporting confirmation data for swaps that are intended to be cleared, while still maintaining the requirement to report primary economic terms data, will not benefit reporting workflows and that there is little incremental cost to report confirmation data as reporting systems are set up to capture that information already.[77]

iii. Creation Data Reporting for Swaps That Become Original Swaps

While the proposed amendments to part 45, aside from the removal of the excusal provisions noted above, do not change creation data reporting requirements for swaps that become original swaps, several commenters commented on which entity should be responsible for reporting creation data for swaps that will become original swaps. Some commenters suggested that if reporting of creation data for swaps that become original swaps continues, the DCO, rather than the reporting counterparty, should be responsible for reporting the creation data for that swap.[78] CME commented that assigning all the reporting obligations for original and clearing swaps to the DCO is a better and simpler way to address alpha swap reporting, and would eliminate the need to reconcile original and clearing swaps across SDRs.[79] CMC similarly commented that DCOs are best positioned to report on swaps that they accept or reject for clearing and should assume all reporting obligations for cleared swaps, including all reporting of swaps that are intended to be cleared.[80] AIMA likewise suggested that if the Commission continues to require the reporting of original swaps, assigning the reporting obligations to the DCO will remove reporting burdens and the risk of data fragmentation across SDRs.[81]

Other commenters recommended that the Commission continue requiring the reporting counterparty to report creation data for those swaps that will become original swaps.[82] LCH commented that the reporting counterparty should always be a party to the transaction and therefore, in the case of a swap that will become an original swap, the DCO would not be better suited than the SEF, DCM, or reporting counterparty to report the creation data.[83] Eurex suggested that assigning the reporting obligation of original swap creation data to the DCO may present a timeliness issue depending on when the DCO receives the necessary information from the counterparties.[84] ISDA likewise agreed that the obligation to report swaps that become original swaps should remain with the reporting counterparty for that swap.[85]

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[66] *See* 80 FR 52544, 52550.

[67] FSR requested that the Commission codify no action relief issued by the Division of Clearing and Risk and the Division of Market Oversight on April 5, 2013, providing relief to non-SD/MSPs from reporting requirements for swaps between wholly-owned affiliates. *See* FSR Oct. 30, 2015 Letter, at 5 (referencing CFTC No-Action Letter No. 13–09 (Apr. 5, 2013)). This request is beyond the scope of the NPRM and will not be addressed in this release.

[68] *See* FSR Oct. 30, 2015 Letter, at 2; CMC Oct. 30, 2015 Letter, at 2; ISDA Oct. 30, 2015 Letter, at 4; LCH Oct. 30, 2015 Letter, at 2; DTCC Oct. 30, 2015 Letter, at 3.

[69] *See* FSR Oct. 30, 2015 Letter, at 2; CMC Oct. 30, 2015 Letter, at 2.

[70] ISDA also commented that currently not all DCOs report clearing swaps in a consistent manner in instances where an affiliate of a clearing member enters into a swap that is subsequently cleared through its affiliated clearing member. ISDA suggested that the Commission make clear that the submission of a swap for clearing should not result in a change in the name of the counterparty that is reported to an SDR and that the report submitted by the DCO for the clearing swap has to reflect the relevant affiliate and not the clearing member as the legal counterparty to the clearing swap with the derivatives clearing organization. *See* ISDA Oct. 30, 2015 Letter, at 12. While noting this comment, the Commission declines to address this as beyond the scope of the NPRM.

[71] *See* ISDA Oct. 30, 2015 Letter, at 4; DTCC Oct. 30, 2015 Letter, at 3 (distinguishing between reporting obligations and the ability to select the SDR to which data related to clearing swaps is reported); LCH Oct. 30, 2015 Letter, at 2.

[72] *See* CME Oct. 30 2015 Letter, at 3.

[73] *See* Markit Oct. 30 2015 Letter, at 5.

[74] *See* LCH Oct. 30, 2015 Letter, at 2.

[75] *See* FSR Oct. 30, 2015 Letter, at 3; ISDA Oct. 30, 2015 Letter, at 4; EEI/EPSA Oct. 30, 2015 Letter, at 3.

[76] *See* FSR Oct. 30, 2015 Letter, at 3.

[77] *See* Markit Oct. 30, 2015 Letter, at 2–3.

[78] *See e.g.,* CME Oct. 30, 2015 Letter, at 2–3; CMC Oct. 30, 2015 Letter, at 2–3; AIMA Oct. 30, 2015 Letter, at 6; CEWG Oct. 30, 2015 Letter, at 3.

[79] *See* CME Oct. 30, 2015 Letter, at 3.

[80] *See* CMC Oct. 30, 2015 Letter, at 2.

[81] *See* AIMA Oct. 30, 2015 Letter, at 6.

[82] *See* ISDA Oct. 30, 2015 Letter, at 4; LCH Oct. 30, 2015 Letter, at 2; Eurex Oct. 30, 2015 Letter, at 4.

[83] *See* LCH Oct. 30, 2015 Letter, at 2.

[84] *See* Eurex Oct. 30, 2015 Letter, at 4.

[85] ISDA also commented in support of the Commission's proposal to remove the provisions in § 45.3 that excused a reporting counterparty from reporting creation data for a swap accepted for clearing before the primary economic terms reporting deadline. *See* ISDA Oct. 30, 2015 Letter, at 4.

Some commenters suggested that the reporting of any creation data for swaps that will become original swaps is unnecessary.[86] AIMA commented that eliminating reporting for swaps that are intended to be cleared at the time of execution will significantly reduce complexity in the reporting regime and streamline the reported data.[87] AIMA also commented that the Commission's proposed reporting approach for original swaps will not reduce data fragmentation.[88] Similarly, EEI/EPSA suggested that there is little to no benefit to original swap reporting for swaps that are intended to be cleared at the time of execution and that counterparties should not be required to report any creation data for such swaps.[89] Other commenters, in response to the IDWG Request for Comment, supported the continued reporting of creation data for swaps that will become original swaps.[90]

iv. Choice of SDR Provisions

The Commission received a number of comments on its proposal regarding the selection of the SDR to which the required swap creation data should be reported. Some commenters were supportive of the Commission's proposed addition of § 45.3(j) and proposed modifications to § 45.10 relating to the choice of the SDR for a particular swap. As discussed below, other commenters suggested modifications to the Commission's proposal and changes to the manner in which the SDR is selected for a particular swap.

With respect to clearing swaps, commenters were divided as to which entity should have the ability to select the SDR. FSR, LCH, and ISDA all supported allowing the DCO to select the SDR for purposes of reporting creation data for clearing swaps, as the DCO has the sole obligation to report clearing swaps.[91] CME and LedgerX similarly supported the proposal to allow DCOs to select the SDR for clearing swaps.[92] CME supports the Commission's proposal to assign all clearing swap reporting obligations, and the right to select the SDR to which it reports, to the DCO. CME also recommended that the Commission assign all original swap reporting obligations, and associated SDR selection rights, to the DCO, which would, in CME's opinion, ensure that all data for a cleared swap transaction is housed in the same SDR, thereby avoiding data fragmentation.[93]

Other commenters suggested that the reporting counterparty to the swap that becomes the original swap should select the SDR to which the clearing swaps are reported. DTCC commented that the DCO for a clearing swap should have the obligation to report the clearing swap to the SDR selected by the reporting counterparty to the swap that became the original swap, or selected by the SEF or DCM for on-facility swaps.[94] DTCC commented that this "single SDR approach" would be vital for providing a full audit trail and the ability to efficiently aggregate data.[95] DTCC also commented that allowing the DCO to select the SDR for clearing swaps creates a competition problem due to vertically integrated SDRs and DCOs.[96] DTCC explained that permitting a DCO to report to an affiliated SDR when the original swap data had been reported to another SDR, allows DCOs to bundle services and further entrenches DCOs' vertical integration of trade execution, clearing, and data reporting.[97] Markit recommended that the Commission allow the reporting counterparty to the swap that becomes the original swap to select the SDR to which the clearing swap is reported, while also allowing that reporting counterparty to delegate the selection of the swap data repository to the DCO. Markit commented that this counterparty choice approach would result in a more competitive DCO marketplace.[98]

Other commenters suggested that, for on-facility swaps that are not cleared by a DCO, the party responsible for reporting continuation data for the swap should not be bound by the SEF or DCM's choice of SDR for the reporting of creation data.[99] ISDA commented that in such cases the selection of the SDR should not be assigned to the entity that has the first obligation to report, but rather should be assigned to the entity that has the longest, recurring, or most frequent obligation to report.[100]

v. Reporting of Principal Model Cleared Swaps

Finally, a few comments focused on swaps that are cleared through a principal, rather than agency, model. Eurex commented that it is not clear under the proposal which entity is to be reported as the counterparty to the DCO with regard to a clearing swap in the principal model.[101]

4. Final Rule

The Commission has considered the comments that it received in response to the proposed changes to § 45.3. As discussed above, some of the proposed changes to § 45.3 received widespread support among commenters, while other proposed changes received both support and objection from commenters. The Commission has decided to adopt the changes to § 45.3 as proposed in the NPRM for the following reasons.[102]

i. Creation Data Reporting for Clearing Swaps

As discussed above, the Commission's proposal to require DCOs to report creation data for clearing swaps received support from commenters.[103] The Commission agrees with these commenters that the DCO is in the best position to report creation data for clearing swaps. As for Markit's proposed counterparty choice alternative, the Commission recognizes the flexibility that Markit's proposal could offer parties to the clearing swap. However, the Commission believes Markit's proposal would likely result in additional complexity in the reporting process and could obscure, to the Commission, which entity has the ultimate responsibility for reporting the clearing swap. After considering the comments received, the Commission continues to believe that the DCO is the entity with the easiest and quickest access to full information with respect to PET data and confirmation data for clearing swaps. Commission regulation

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[86] *See* AIMA Oct. 30, 2015 Letter, at 2–6; EEI/EPSA Oct. 30, 2015 Letter, at 3; CEWG Oct. 30, 2015 Letter, at 2.

[87] *See* AIMA Oct. 30, 2015 Letter, at 3.

[88] *See* AIMA Oct. 30, 2015 Letter, at 4 (noting that reporting original swap creation data to one SDR and reporting clearing swap data to a different SDR may undermine data quality for the Commission's supervisory purposes).

[89] *See* EEI/EPSA Oct. 30, 2015 Letter, at 3.

[90] *See* NPRM, 80 FR 52544, 52549 at nn. 37–39 (citing DTCC May 27, 2014 Letter at 17–18; AFR May 27, 2014 Letter at 5; Markit May 27, 2014 Letter at 25; TR SEF May 27, 2014 Letter at 10).

[91] *See* FSR Oct. 30, 2015 Letter, at 2; LCH Oct. 30, 2015 Letter, at 2; ISDA Oct. 30, 2015 Letter, at 4.

[92] *See* CME Oct. 30, 2015 Letter, at 1–2; LedgerX Oct. 30, 2015 Letter, at 1.

[93] *See* CME Oct. 30, 2015 Letter, at 2–3.

[94] *See* DTCC Oct. 30, 2015 Letter, at 3.

[95] *See id.* at 4.

[96] *See id.* at 7.

[97] *See id.*

[98] *See* Markit Oct. 30, 2015 Letter, at 5.

[99] *See* ISDA Oct. 30, 2015 Letter, at 4–5; JBA Oct. 30, 2015 Letter, at 1.

[100] *See* ISDA Oct. 30, 2015 Letter, at 4–5.

[101] *See* Eurex Oct. 30, 2015 Letter, at 9; *see also* FSR Oct. 30, 2015 Letter, at 5.

[102] The Commission has made one non-substantive conforming change to final § 45.3(b), changing the phrase "exception or exemption from the clearing requirement" to "exception to, or exemption from, the clearing requirement," to make this provision consistent with other uses of the phrase throughout § 45.3.

[103] *See* FSR Oct. 30, 2015 Letter, at 2; CMC Oct. 30, 2015 Letter, at 2; ISDA Oct. 30, 2015 Letter, at 4; DTCC Oct. 30, 2015 Letter, at 3; LCH Oct. 30, 2015 Letter, at 2.

§ 39.12(b)(6) requires DCOs to have rules providing that, upon acceptance of a swap by the DCO for clearing, the original swap is extinguished and replaced by an equal and opposite swap between the DCO and each clearing member acting as either principal for a house trade or agent for a customer trade.[104] Because the DCO must replace an original swap with clearing swaps when accepting the original swap for clearing, the Commission believes that the DCO should be the entity that reports creation data for clearing swaps, and adopts its proposal to require DCOs to report creation data for clearing swaps.

The Commission notes LCH's comments that, when establishing the timing requirement for reporting clearing swaps that do not replace original swaps in § 45.3(e), the term "creation of a clearing swap" may better capture compression events than "execution of a clearing swap." The Commission believes that the phrase "execution of a clearing swap," for purposes of part 45, is sufficiently clear to cover reporting obligations for all clearing swaps that do not replace original swaps. The Commission also believes that the adopted reporting requirements for clearing swaps would cover post-clearing allocations of block trades raised by LCH. If a block trade is allocated after clearing, then any allocations of that block would have a DCO as one counterparty. Thus, such post-allocation swaps would be clearing swaps and must be reported by the DCO pursuant to § 45.3(e).

ii. Removal of Confirmation Data Reporting Requirements for Intended To Be Cleared Swaps

Under the new rules, SEFs/DCMs and reporting counterparties will continue to be required to report PET data as part of their creation data reporting, but will be required to report confirmation data only for swaps that, at the time of execution, are not intended to be submitted to a DCO for clearing. For swaps that, at the time of execution, are intended to be submitted to a DCO for clearing, SEFs/DCMs and reporting counterparties will not be required to report confirmation data. If the swap is accepted for clearing by a DCO, the DCO will be required to report confirmation data for the clearing swaps pursuant to proposed § 45.3(e).[105]

With respect to swaps that will become original swaps, the Commission received widespread support of the proposed elimination of the requirement to report confirmation data associated with these swaps.[106] One commenter did suggest that there is little incremental cost to continuing to require reporting of confirmation data for swaps that will become original swaps.[107] However, the Commission continues to believe that the confirmation data requirements for clearing swaps provide the Commission with a sufficient representation of the confirmation data for a cleared swap transaction, as the original swap is extinguished upon acceptance for clearing and replaced by equal and opposite clearing swaps. Accordingly, the Commission is adopting its proposal to remove the confirmation data reporting requirement for swaps that are intended to be cleared at the time of execution.

iii. Creation Data Reporting for Swaps That Become Original Swaps

With the exception of the removal of excusal provisions, the Commission has not proposed to change the existing requirement to report creation data for swaps that will become original swaps. As noted in the NPRM, CEA section 2(a)(13)(G) requires each swap, whether cleared or uncleared, to be reported to a registered SDR.[108] The Commission did, however, receive some comments urging the Commission to eliminate the existing requirement to report swaps that will become original swaps. The Commission also received, in response to the IDWG Request for Comment, comments in support of continued reporting of creation data for swaps that will become original swaps.[109]

Having reviewed the comments regarding reporting of swaps that become original swaps, the Commission continues to interpret CEA section 2(a)(13)(G) as requiring all swaps to be reported, which would include swaps that become original swaps as distinct swaps from resulting clearing swaps under § 39.12(b)(6). Further, the Commission continues to believe that original swaps contain essential information regarding the origins of cleared swap transactions for market surveillance and audit-trail purposes, including but not limited to the identity of the original counterparties, the execution venue, and the timestamp of the original transaction between the original counterparties. Such essential information could not be easily determined if only resulting clearing swaps were to be reported. The Commission's ability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing novation relies on this information. The Commission also notes that the continued reporting of swaps that become original swaps is consistent with the SEC's proposed Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information.[110] Finally, the continued reporting of original swaps, including original swap terminations, will aid the Commission's ability to analyze cleared swap activity and review swap activity for compliance with the clearing requirement. For these reasons the Commission, in this final rule, continues to require reporting of swaps that will become original swaps.

The Commission received divided comments as to which entity should be responsible for reporting creation data for those swaps that will become original swaps. Some commenters suggested that the DCO should be the reporting counterparty,[111] while other commenters recommended that the reporting counterparty report creation data for those swaps that will become original swaps.[112] After careful consideration of the comments received on this issue, the Commission believes that the creation data reporting requirements for those swaps that will become original swaps should remain as they currently exist, aside from the removal of excusal provisions noted above. The Commission recognizes that reporting counterparties and registered entities have invested substantial time and resources to report swaps (both cleared and not cleared) to SDRs and that DCOs have invested substantial resources to report clearing swaps. The Commission believes that maintaining the existing requirement for the reporting counterparty, rather than for the DCO, to report creation data of the swap that will become an original swap will help to prevent disruption of established industry workflows. The Commission also continues to believe that the SEF/DCM or reporting counterparty has the easiest and fastest access to initial creation data for swaps that become original swaps.

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[104] *See* 17 CFR 39.12(b)(6).

[105] The Commission notes that this change only impacts certain confirmation data reporting and recordkeeping requirements in § 45.3, and does not alter existing obligations to generate or exchange confirmations under other Commission regulations.

[106] *See* FSR Oct. 30, 2015 Letter, at 3; ISDA Oct. 30, 2015 Letter, at 4; EEI/EPSA Oct. 30, 2015 Letter, at 3.

[107] *See* Markit Oct. 30, 2015 Letter, at 2–3.

[108] *See* 80 FR 52544, 52548.

[109] *See* NPRM, 80 FR 52544, 52549, nn. 37–39 (citing DTCC May 27, 2014 Letter at 17–18; AFR May 27, 2014 Letter at 5; Markit May 27, 2014 Letter at 25; TR SEF May 27, 2014 Letter at 10).

[110] *See* Regulation SBSR, 80 FR 14740.

[111] *See* CME Oct. 30, 2015 Letter, at 2–3; CMC Oct. 30, 2015 Letter, at 2–3; AIMA Oct. 30, 2015 Letter, at 6; CEWG Oct. 30, 2015 Letter, at 2.

[112] *See* ISDA Oct. 30, 2015 Letter, at 4; LCH Oct. 30, 2015 Letter, at 2; Eurex Oct. 30, 2015 Letter, at 4.

As discussed in its Final Part 45 Rulemaking, the Commission believes that requiring all swaps that become original swaps to be reported only to SDRs chosen by the DCO of the resulting clearing swaps could create an uneven playing field between DCO affiliated SDRs and non-DCO affiliated SDRs.[113] Likewise, if the reporting counterparty or SEF/DCM were to report creation data, or select the SDR to which such data is reported, an SDR in which swap dealers have an ownership interest may obtain a dominant market position. This Final Rule avoids injecting the Commission into a market decision by maintaining the requirement that creation data for swaps that become original swaps is reported by the reporting counterparty for that swap, or the SEF/DCM, and the resulting clearing swaps are reported by the DCO.

The Commission acknowledges the data fragmentation concerns raised by those that recommend DCOs report original swap creation data, however, the Commission also recognizes that requiring the DCOs, rather than the original reporting counterparty, to report original swap creation data may also present challenges. For example, Eurex noted that there could be a timeliness issue depending on when the DCO receives necessary information from counterparties to report creation data.[114] The Commission also is concerned that, should DCOs report original swaps, potential delays in clearing could delay real-time swaps reporting pursuant to part 43. The Commission believes that accurate and timely reporting of the required data fields by all parties, in particular the clearing swap PET fields and data elements specific to terminations of original swaps, will alleviate data fragmentation concerns for those situations where the original swap and clearing swaps are reported to different SDRs.

iv. Choice of SDR Provisions

The Commission received a variety of comments on its proposed addition of § 45.3(j) and modifications to § 45.10 regarding the choice of the SDR for a particular swap. With respect to clearing swaps, some commenters recommended that the DCO should select the SDR,[115] while other commenters suggested the reporting counterparty to the original swap should select the SDR to which the clearing swap must be reported.[116] The Commission has considered these comments and continues to believe, as discussed above, that placing the obligation to choose the SDR on the registered entity or counterparty that is required to first report the required swap creation data, rather than on another entity, will result in more efficient data reporting. Allowing the first entity to report data on a swap to choose the SDR will allow reporting entities to select an SDR to which they have established connections; giving another entity the ability to choose the SDR could require the first reporting entities to connect to multiple SDRs. The Commission also believes allowing the first reporting registered entity or counterparty to choose the SDR will also promote competition among SDRs to provide SDR services to a broad array of reporting entities.

Requiring this method of SDR selection also avoids inserting anyone other than a party to the swap (or facility where the transaction is executed) into the decision as to how a registered entity or counterparty fulfills its regulatory obligation to report initial required swap creation data. As with the "first-touch" approach taken with respect to the creation of USIs in part 45,[117] the Commission believes that the entity with the first reporting obligation should select the SDR for that report. The Commission believes that this method of SDR selection will avoid delays in real-time reporting for part 43 purposes. If DCOs were to select the SDR for an original swap, the DCO would not be in a position to make such selection until after a swap was accepted for clearing. Any delays in clearing would translate into delays in reporting for both part 43 real-time reporting and part 45 reporting.

The registered entity or counterparty that is required to report a swap pursuant to § 45.8 may select an SDR to which its technological systems are most suited or to which it already has an established relationship, providing for the efficient and accurate reporting of swap data. The Commission notes that this Final Rule does not prohibit a registered entity or counterparty from choosing an SDR based on consideration of market preference or other factors, however, the obligation to choose the SDR will rest solely with the registered entity or counterparty set forth in amended § 45.8. The Commission recognizes that this may result in original swaps and clearing swaps being reported to different SDRs, however, the Commission believes that the required data fields, such as original swap USI included in clearing swap reporting, and clearing swap USIs included in original swap reporting, will allow the Commission to efficiently and accurately link data across SDRs and perform its regulatory mandate.

The Commission has also noted ISDA's proposed alternative that the entity with the "longest, recurring, or most frequent obligation to report" be given choice of SDR. In particular, ISDA expressed concern that market participants would be required, due to the made available to trade mandate, to trade certain swaps at a particular SEF, and therefore be required to report to that SEF's chosen SDR. However, the Commission notes that any swaps made available to trade would be subject to the clearing mandate. As discussed above, counterparties to cleared, on-facility swaps would likely have no reporting obligations.[118] Therefore, the concern raised by ISDA would not likely impact a large percentage of on-facility swaps. Moreover, ISDA notes that its proposed alternative would require amending various other provisions in part 45, including assignment of reporting counterparty designation and USI creation. Additionally, the Commission notes that the "longest, recurring, or most frequent obligation to report" may be difficult to determine at the outset of a swap, creating potential confusion as to who could select the SDR. Because amended § 45.3(j) codifies current industry practice,[119] the Commission believes the choice of SDR provisions adopted in this final rule create the least disruption in the market while achieving the goal of consistent and timely swaps reporting.

v. Reporting of Principal Model Clearing Swaps

The Commission has noted comments from Eurex on reporting of clearing swaps under the principal clearing model. The Commission is aware of issues surrounding the reporting of principal model clearing swaps, but is not providing further guidance at this time.

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[113] *See* 77 FR 2136, 2149.

[114] *See* Eurex Oct. 30, 2015 Letter, at 4.

[115] *See* FSR Oct. 30, 2015 Letter, at 2; LCH Oct. 30, 2015 Letter, at 2; ISDA Oct. 30, 2015 Letter, at 4; CME Oct. 30, 2015 Letter, at 2–3 (CME also suggested that the DCO select the SDR to which *original* swaps are reported); LedgerX Oct. 30, 2015 Letter, at 1.

[116] *See* DTCC Oct. 30, 2015 Letter, at 3; Markit Oct. 30, 2015 Letter, at 5 (Markit also suggested the counterparty have the option to delegate the selection of the SDR to the DCO).

[117] *See* Final Part 45 Rulemaking, 77 FR 2136, 2158.

[118] *See supra,* n. 26, discussing reporting obligations for counterparties to cleared, on-facility swaps.

[119] *See* NPRM, 80 FR 52544, 52550.

C. Swap Data Reporting: Continuation Data—Amendments to § 45.4

1. Existing § 45.4

Regulation 45.4 governs the reporting of swap continuation data to an SDR during a swap's existence through its final termination or expiration. This provision establishes the manner in which continuation data, including life cycle event data or state data, and valuation data,[120] must be reported (§ 45.4(a)), and sets forth specific continuation data reporting requirements for both cleared (§ 45.4(b)) and uncleared (§ 45.4(c)) swaps. For cleared swaps, § 45.4(b) currently requires that life cycle event data or state data be reported by the DCO, and that valuation data be reported by both the DCO and by the reporting counterparty (if the reporting counterparty is an SD or MSP).

For uncleared swaps, § 45.4(c) requires the reporting counterparty to report all required swap continuation data, including life cycle event data or state data, and valuation data.

2. Proposed Amendments to § 45.4

The Commission understands that § 45.4 could be clarified regarding continuation data reporting responsibilities for each of the swaps involved in a cleared swap transaction. Accordingly, the Commission proposed several amendments to § 45.4 to better delineate the continuation data reporting requirements associated with each swap involved in a cleared swap transaction.[121] In particular, the Commission proposed conforming changes to existing § 45.4(a), revisions to existing § 45.4(b) and to existing § 45.4(c) (proposed to be renumbered as § 45.4(d)), and the addition of new § 45.4(c). Each proposed amendment is discussed in detail below.

i. Proposed Conforming Changes to § 45.4(a)

The Commission proposed to revise the heading of § 45.4(a) to read "Continuation data reporting method generally" to reflect that the continuation data reporting method requirements in § 45.4(a) apply to all swaps, regardless of asset class or whether the swap is an original swap, clearing swap or uncleared swap, whereas the continuation data reporting requirements in proposed § 45.4(b), (c), and (d) would apply to clearing swaps, original swaps, and uncleared swaps, respectively.[122]

ii. Proposed Revisions to § 45.4(b)

Regulation 45.4(b) currently governs continuation data reporting obligations for "cleared swaps," but does not distinguish among the different swaps involved in a cleared swap transaction (*i.e.* original and clearing swaps). The Commission thus proposed to revise the introductory language of § 45.4(b) to replace the terms "cleared swaps" and "swaps cleared by a derivatives clearing organization," which were not defined in the Final Part 45 Rulemaking, with the defined term "clearing swaps." [123]

The Commission proposed to remove existing § 45.4(b)(2)(ii), which requires a reporting counterparty that is an SD or MSP to report valuation data for cleared swaps daily, in addition to the valuation data that is required to be reported by the DCO pursuant to § 45.4(b)(2)(i). For clearing swaps, the DCO would be the only swap counterparty required to report continuation data, including valuation data.[124]

iii. Proposed Addition of § 45.4(c): Continuation Data Reporting for Original Swaps

Existing § 45.4(c) governs continuation data reporting for uncleared swaps. The Commission proposed renumbering § 45.4(c) as § 45.4(d) (for reasons discussed below), and proposed the addition of a new § 45.4(c), which would set forth the continuation data reporting requirements for original swaps.[125]

Specifically, proposed § 45.4(c) would require a DCO to report all required continuation data for original swaps, including original swap terminations, to the original swap SDR pursuant to § 45.3(a) through (d).[126] As proposed, § 45.4(c) would also reference the existing requirement that all continuation data must be reported in the manner provided in § 45.13(b), and that the SDR, in order to comply with § 49.10, must also "accept and record" such data, including original swap terminations.[127] The proposed addition of a reference to § 49.10 is consistent with an IDWG commenter's request for clarification regarding the obligation of the SDR to accept and process the termination message from the DCO.[128]

As proposed, § 45.4(c)(1) would require a DCO to report all life cycle event data for an original swap on the same day that any life cycle event occurs, or to report all state data for the original swap, daily.

The continuation data reporting requirements of proposed § 45.4(c) would apply to a swap that has been submitted to a DCO for clearing and that becomes an original swap by virtue of the DCO's acceptance of such swap for clearing. The DCO's continuation data reporting obligations for a swap to which it is not a counterparty (*i.e.,* for swaps other than clearing swaps) will only be triggered if a swap is accepted for clearing (and thus becomes an original swap). If a swap is submitted to a DCO for clearing and is not accepted for clearing, then the DCO will not have continuation data reporting obligations for the swap, because the swap is not an original swap or a clearing swap.

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[120] "Required swap continuation data" is defined in § 45.1 and includes "life cycle event data" or "state data" (depending on which reporting method is used) and "valuation data." Each of these data types is defined in § 45.1. "Life cycle event data" means all of the data elements necessary to fully report any life cycle event. "State data" means all of the data elements necessary to provide a snapshot view, on a daily basis of all of the primary economic terms of a swap. "Valuation data" means all of the data elements necessary to fully describe the daily mark of the transaction, pursuant to CEA section 4s(h)(3)(B)(iii), and to § 23.431 if applicable. 17 CFR 45.1.

[121] *See* 80 FR 52544, 52551.

[122] *See* 80 FR 52544, 52551.

[123] *See* 80 FR 52544, 52551–52.

[124] This proposal would codify certain no-action letters issued by the Commission's Division of Market Oversight. *See* CFTC No-Action Letter No. 12–55 (Dec. 17, 2012); CFTC No-Action Letter No. 13–34 (Jun. 26, 2013); and CFTC No-Action Letter No. 14–90 (Jun. 30, 2014). Staff no-action relief from the requirements of § 45.4(b)(2)(ii) has been in effect since the initial compliance date for part 45 reporting.

[125] *See* 80 FR 52544, 52552.

[126] As discussed above, under the proposed revisions to §§ 45.3(a)–(d), a SEF/DCM or reporting counterparty would be required to report creation data for all swaps except clearing swaps (including for swaps that later become original swaps by virtue of their acceptance for clearing by a DCO). *See* Section II.B.4., *supra*. *See also* §§ 45.10 (a)–(c) (providing that all required swap continuation data reported for a swap must be reported to the same SDR to which required swap creation data was first reported pursuant to § 45.3). The Commission notes that pursuant to existing regulation § 45.13, each reporting entity and/or counterparty is required to use the facilities, methods, or data standards provided or required by the SDR to which the entity or counterparty reports the data. 17 CFR 45.13.

[127] SDR regulation § 49.10(a) provides that an SDR shall accept and promptly record all swap data in its selected asset class and other regulatory information that is required to be reported pursuant to part 45 and part 43 by DCMs, DCOs, SEFs, SDs, MSPs and/or non-swap dealer/non-major swap participant counterparties. Section 49.10(a)(1) further provides that for purposes of accepting all swap data as required by part 45 and part 43, the registered SDR shall adopt policies and procedures, including technological protocols, which provide for electronic connectivity between the SDR and DCMs, DCOs, SEFs, SDs, MSPs and/or certain other non-swap dealer/non-major swap participant counterparties who report such data. It further states that the technological protocols established by a SDR shall provide for the receipt of swap creation data, swap continuation data, real-time public reporting data, and all other data and information required to be reported to such SDR. Additionally, § 49.10(a)(1) provides that the SDR shall ensure that its mechanisms for swap data acceptance are reliable and secure. 17 CFR 49.10. The Commission also proposed conforming changes to the introductory language of § 45.3 and § 45.4 to make clear that all required swap creation and continuation data must be reported to the relevant SDR in the manner provided in § 45.13, and pursuant to § 49.10, which sets forth rules governing the acceptance and recording of such data.

[128] *See* ITV May 27, 2014 Letter, at 4 (noting that failure to accept the termination message can produce inaccurate swap data due to double reporting and that the rejection of the termination message could distort notional amounts and market risks, and stating that amending the reporting rules to place the reporting obligation on the DCO for intended to be cleared swaps simplifies the reporting flows and places the responsibility on the party best-suited to accurately report cleared swap data).

iv. Proposed Additional Continuation Data Fields To Be Reported by DCOs

Proposed § 45.4(c) would require DCOs to report additional data fields when reporting continuation data on original swaps.[129] These fields would be the LEI of the SDR to which the DCO reported clearing swaps replacing the original swap; the USI of the original swap being replaced; and the USIs of each clearing swap that is replacing the original swap. As discussed in the NPRM,[130] the Commission proposed these additional data fields to enable the Commission to track the complete life of a cleared swap transaction. Inclusion of these data fields in continuation data on the original swap, taken in conjunction with existing requirements to reporting original swap information in reports clearing swaps, will aid the Commission in linking the original swap and all clearing swaps replacing it.

v. Proposed Revisions to § 45.4(d)

As mentioned above, the Commission proposed to renumber § 45.4(c) (Continuation data reporting for uncleared swaps) as § 45.4(d). The Commission also proposed to amend § 45.4(d), which applies to all swaps that are not cleared by a derivatives clearing organization, to add the phrase "including swaps executed on or pursuant to the rules of a swap execution facility or designated contract market."[131] This proposed change would clarify the existing requirement that reporting counterparties report all required swap continuation data for an uncleared swap, irrespective of whether the swap was executed off-facility (in which case the reporting counterparty must report required swap creation data), or whether the swap was executed on or pursuant to the rules of a SEF or DCM (in which case the SEF or DCM must report the required swap creation data).[132]

Finally, the Commission proposed to modify the introductory language to § 45.4 and § 45.4(d)(1)(ii)(A) to remove outdated references to compliance dates that have already expired.[133]

3. Comments Received

The Commission received numerous comments on its proposed revisions to § 45.4.[134] Below is a summary of comments for each of the primary revisions and additions to § 45.4.

i. Comments on Proposed Revisions to § 45.4(b)

The proposed amendment to § 45.4(b)(2), requiring only DCOs to submit valuation data for clearing swaps, was widely supported in the comment letters. Although one commenter contended that valuation data from SD/MSP swap counterparties is valuable information and that the Commission should require such information from SD/MSP counterparties for all swaps, cleared or uncleared,[135] many commenters to the IDWG Request for Comment and NPRM stated that only the DCO should have the responsibility to report valuation data for cleared swaps, and that the Commission should eliminate the requirement for an SD or MSP to report valuation data for cleared swaps.[136] One commenter noted that valuation data and mark-to-market value data provided by DCOs are sufficient for the Commission to understand clearing swap valuations, particularly because the DCO's valuation method is the industry standard.[137]

ii. Comments on Proposed Revisions to § 45.4(c)

Commenters were split on support of proposed § 45.4(c), which would require the DCO to report continuation data on the original swaps once they are accepted for clearing to the SDR to which the original swap was originally reported. ISDA strongly supported the revision, stating that it would eliminate the issue of cleared "alpha" swaps that had not been terminated, which negatively affects data quality. ISDA commented that DCOs should be allowed to report continuation data as either lifecycle event data or state data.[138] DTCC, in its response to the IDWG Request for Comment, also supported requiring DCOs to report terminations of original swaps.[139] However, DTCC commented that some DCOs fail to submit termination of original swaps to DTCC according to DTCC's technical standards.[140] CEWG commented that DCOs were in the best position to report all data on original and clearing swaps, although it believes the original swap should not be reported.[141]

CME commented that under the proposed division of reporting obligations for original swaps and clearing swaps, DCOs are dependent on original swap counterparties providing sufficient information on the original swaps to fulfill reporting obligations on terminations of the original swap.[142] CME noted that counterparties rarely provided this information, meaning that DCOs cannot effectively terminate original swaps. As an alternative, CME proposed that DCOs should be the reporting party for creation and continuation data for both original and clearing swaps.[143]

In contrast, some commenters recommended that the clearing member, and not the DCO, should report termination of the original swap to the

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[129] *See* 80 FR 52544, 52552–53.

[130] *See* 80 FR 52544, 52532–33.

[131] *See* 80 FR 52544, 52553.

[132] *See* 17 CFR 45.3(b)–(d) (creation data reporting requirements for off-facility swaps) and 17 CFR 45.3(a) (creation data reporting requirements for swaps executed on or pursuant to the rules of a SEF or DCM). *See also* Section II.B.4.iii *supra.*

[133] *See* 80 FR 52544, 52553.

[134] The Commission did not receive any comment directly addressing the conforming changes to § 45.4(a) or renumber and amended § 45.4(d). The Commission received a comment from FSR on continuation data for amortizing swaps. *See* FSR Oct. 30, 2015 Letter, at 4. Because the NPRM was limited to revisions of § 45.4 as it relates to clearing swaps, FSR's request is beyond the scope of this rulemaking.

[135] *See* Markit May 27, 2014 Letter, at 10–11 (arguing that the Commission might receive valuable information from valuations reported by counterparties).

[136] *See* ABA May 27, 2014 Letter, at 2; CME May 27, 2014 Letter, at 9–10; FSR May 27, 2014 Letter, at 2; ITV May 27, 2014 Letter, at 2, 10, 15; ISDA May 27, 2014 Letter, at 13–14; JBA May 27, 2014 Letter, at 2–3; MFA May 27, 2014 Letter, at 2, 4; NGSA May 27, 2014 Letter, at 4–5; AIMA Oct. 30, 2015 Letter, at 6; ISDA Oct. 30, 2015 Letter, at 5; JBA Oct. 30, 2015 Letter, at 2; FSR Oct. 30, 2015 Letter, at 3.

[137] *See* Eurex Oct. 30, 2015 Letter, at 6. Eurex also stated that information on posted collateral could be a useful data point for the Commission, but the original counterparties would be in a better position than the DCO to report such information. Eurex also stated that DCOs could provide information on margin, but that such data would require more effort.

[138] *See* ISDA Oct. 30, 2015 Letter, at 5.

[139] *See* DTCC May 27, 2014 Letter, at 7 (stating that when an alpha swap is novated, the Commission should require a DCO to submit information about the beta and gamma swaps in addition to the termination notice for the alpha swap).

[140] *See* DTCC Oct. 30, 2015 Letter, at 8.

[141] *See* CEWG Oct. 30, 2015 Letter, at 3. See Section II.B.3, above, for discussion of CEWG's and other commenters' positions on reporting of creation data for an original swap.

[142] *See* CME Oct. 30, 2015 Letter, at 3.

[143] *See* CME Oct. 30, 2015 Letter, at 3.

SDR.[144] Eurex stated that the clearing member would already have information on the original swap and a connection to the SDR where the original swap was reported, putting the original reporting party in the best position to report a termination.[145] LCH commented that having the original reporting party report any continuation events would avoid reporting gaps on events occurring between creation and clearing.[146] LCH commented that requiring DCOs to submit cancelations of original swaps would be inconsistent with reporting obligations under the European Markets Infrastructure Regulation ("EMIR").[147] LCH also commented that the choice of original swap SDR could become an eligibility criterion for clearing, and that DCOs could potentially reject swaps from clearing based on the original swap SDR.[148] Eurex and LCH both noted that the requirement would force DCOs to connect to all registered SDRs and report terminations according to the technical requirements of each SDR.[149] As an alternative, Eurex proposed that DCOs be allowed to select the SDR to which they report the termination of the original swap.[150]

Regarding timing of reporting continuation data for original swaps, ISDA supported the provision in new § 45.4(c) allowing DCOs to report continuation data on original swaps daily and via either lifecycle event data or state data.[151] The Japanese Bankers Association commented that original swaps should be terminated as soon as technologically practicable, to align reporting on clearing swaps with reporting on cleared futures transactions under § 1.74.[152] Eurex commented that terminations were the only lifecycle events for original swaps that would need to be reported as continuation data.[153]

DTCC requested that the Commission offer guidance on how SDRs, DCOs, and any other affected entities should address previously reported cleared swaps for which the original swap had not been terminated.[154]

iii. Comments on Proposed Additional Continuation Data Fields To Be Reported by DCOs

Several commenters asserted that the most cost-effective method for establishing a link between the original swaps and the swaps that replace the original swap upon acceptance for clearing is to include the USI of the original swap as a prior USI for the beta and gamma swaps.[155] Several commenters to the IDWG Request for Comment supported the concept of requiring that the DCO provide USIs for clearing swaps to the counterparties to those swaps under proposed Section 45.5(d)(2).[156] ISDA, DTCC and Markit generally supported the requirement that DCOs include the USI of the original swap when reporting clearing swaps, but objected to requiring additional fields linking original and clearing swaps as redundant.[157] LCH suggested that there should be a standardized format for reporting terminations of original swaps that must be accepted by all SDRs.[158]

4. Final Rule Text

Having considered the comments received, the Commission has decided to adopt the amendments to § 45.4 as proposed.

i. Conforming Changes to § 45.4(a)

Receiving no comments on the conforming changes to § 45.4(a), the Commission adopts these changes as proposed. The changes clarify that the standards for reporting continuation data in § 45.4(a) apply to all continuation events regardless of asset class or whether the swap is uncleared, an original swap, or a clearing swap.

ii. Revisions to § 45.4(b)

The Commission notes support among market participants for the amendment to § 45.4 removing the requirement that SDs and MSPs report valuation data for clearing swaps. The Commission adopts this revision, codifying existing no-action relief,[159] as proposed.

iii. Addition of § 45.4(c)—Continuation Data Reporting for Original Swaps

The Commission notes the different opinions offered by commenters on the proposed addition of § 45.4(c), which would require DCOs to report continuation data, including terminations, of original swaps. The Commission has considered the alternative approaches to reporting original swap terminations that were proposed by commenters, such as requiring original swap reporting parties to report terminations; requiring DCOs to report both original and clearing swaps; and allowing DCOs to select the SDR for original swap terminations. The Commission believes that its proposed method best incorporates existing industry practice, whereby DCOs generally report clearing swaps as well as submitting termination messages on original swaps, thereby limiting additional costs. It may be more burdensome for the counterparties to the original swaps to report terminations because they would have to receive messages from the DCO confirming that the original swap was accepted for clearing, then translate that message from the DCO into a termination message to the SDR. This may be particularly burdensome for commercial end-users executing swaps on SEFs or DCMs who might otherwise have no reporting obligations and who may not have the infrastructure in place to report as quickly or as efficiently as DCOs.[160]

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[144] *See* OTC Hong Kong May 27, 2014 Letter, at 2–3. OTC Hong Kong stated that requiring the original counterparty to report termination of the alpha would be more cost-effective because the original reporting counterparty is already required to report creation data and life cycle event data of such alpha to an SDR, and thus would already have in place a technical and operational interface with the SDR of its choice. The commenter also stated that imposing an additional requirement on a DCO to report termination of the alpha does not appear to increase or improve the quantity and quality of information already available to the Commission, and that the burden on DCOs of the additional reporting requirement appears to outweigh the benefits to the Commission. *See also* LCH May 29, 2014 Letter, at 8 (stating that reporting entities should already report terminations under the obligation to report continuation data); LedgerX Oct. 30, 2015 Letter, at 3.

[145] *See* Eurex Oct. 30, 2015 Letter, at 3.

[146] *See* LCH Oct. 30, 2015 Letter, at 3.

[147] *See id.*

[148] *See id.*

[149] Eurex Oct. 30, 2015 Letter, at 4–5; LCH Oct. 30, 2015 Letter, at 3.

[150] Eurex also suggested that reporting of terminations could be foregone entirely, as an original swap, by definition, has been accepted for clearing and ceases to exist. *See* Eurex Oct. 30, 2015 Letter, at 5.

[151] ISDA Oct. 30, 2015 Letter, at 5.

[152] JBA Oct. 30, 2015 Letter, at 2; *see also* LedgerX Oct. 30, 2015 Letter, at 3 (commenting that termination of original swap should be reported as soon as technologically practicable, but commenting that reporting party of original swap should have obligation to report termination).

[153] Eurex Oct. 30, 2015 Letter, at 6. ISDA noted that bunched orders may be cleared either pre- or post-allocation, potentially creating multiple clearing swaps for a single original swap. *See* ISDA Oct. 30, 2015 Letter, at 6. ISDA commented that, where allocation is done after clearing, DCOs should report the USI of the pre-allocation swap as the "prior ISO" on clearing swaps for the allocations. Eurex commented that, in the event of default by a clearing member, it attempts to auction off the clearing swap. *See* Eurex Oct. 30, 2015 Letter, at 3. Eurex commented that it was unclear whether the novation of an auctioned clearing swap should be reported to the original swap SDR.

[154] *See* DTCC Oct. 30, 2015 Letter, at 9.

[155] *See* CME May 27, 2014 Letter, at 10 ("The most effective and efficient method for achieving linkage for all such events that have a one-to-one relationship (*i.e.,* assignment or exercise) or a one-to-many relationship (*i.e.,* clearing, novation, allocation) is by the inclusion of a prior USI(s).)"; DTCC letter appendix at 3 (stating that a new swap can generally be linked to an existing swaps through the use of a "prior USI" data field); ISDA May 23, 2014 Letter, at 11 ("Related swaps sent to different SDRs can also be linked via use of the USI. . . ."); Markit May 27, 2014 Letter, at 8 (arguing that the most effective method to establish a link between new and existing swaps is to store the USI of the original swap as a prior USI).

[156] *See* AIMA Oct. 30, 2015 Letter, at 7; Eurex Oct. 30, 2015 Letter, at 7; ISDA Oct. 30, 2015 Letter, at 7. ITV also commented on requirements for SDRs to transmit USIs to non-reporting counterparties for swaps between non-swap dealers or major swap participants, not executed on a DCM or SEF under existing Section 45.5(c)(2). ITV Oct. 30, 2015 Letter, at 4. Because the NPRM did not propose to amend § 45.5(c)(2), this comment is beyond the scope of the proposed rule.

[157] *See* ISDA Oct. 30, 2015 Letter, at 6; DTCC Oct. 30, 2015 Letter, at 8; Markit Oct. 30, 2015 Letter, at 3.

[158] *See* LCH Oct. 30, 2015 Letter, at 4.

[159] *See* CFTC Letter 15–38 (Jun. 12, 2015).

On the other hand, requiring DCOs to report creation and continuation data for both original and clearing swaps could slow the reporting of original swaps for part 43 and part 45 purposes. DCOs would need to receive messages from the counterparties, or from the SEF or DCM where executed on-facility, with all information necessary to report the swap that becomes an original swap. The DCO would then need to transmit such information to the SDR of its choice. Introducing an extra step in reporting would inherently slow reporting, which must be done as soon as technologically practicable particularly for transparency reasons. At the same time, requiring DCOs to report original swaps for part 43 and part 45 purposes would require DCOs to obtain information beyond what would be needed for clearing purposes, thus increasing the burden on DCOs.

Finally, the Commission has considered the alternative proposal that DCOs be allowed to report an original swap termination to an SDR other than that where the original swap was reported. Adoption of this alternative approach could result in significant data fragmentation, as data on a single swap could be housed at more than one SDR. Additionally, this alternative approach would render useless any position reports generated by an SDR, as the SDR (or market participant accessing its own data on an SDR) could not determine if the swaps it housed are still in effect, thereby removing a potential validation tool for market participants.[161]

Having considered these alternatives as suggested by commenters, the Commission has determined to adopt the amendments to § 45.4 as it has proposed. The Commission believes that DCOs are in the best position to report the termination of an original swap because the DCO, through the clearing process, has all information needed to report such terminations. By virtue of its decision to accept a swap for clearing and to extinguish the swap upon acceptance,[162] a DCO will be the first entity to know that clearing occurred and that the original swap should be terminated, putting the DCO in the best position to report terminations quickly. DCOs can build original swap terminations into their systems architecture, allowing for fast, consistent, and accurate terminations.[163]

DCOs will also have all information needed to terminate the original swap based on the swap submitted for clearing. Data required for such termination messages would either be generated by the DCO itself (such as clearing swap USIs and clearing swap SDR LEIs) or could be included in any message submitting a swap for clearing (such as the USI of the original swap and the LEI of the original swap SDR). While CME commented that clearing members have not consistently included original swap USI and LEI of the original swap SDR in messages transmitted to the DCO for clearing, the Commission notes that DCOs could require their clearing members to provide such information. As proposed, § 45.4(c) would require DCOs to report these fields. DCOs must obtain the relevant information from their clearing members.

iv. Addition of Continuation Data Fields To Be Reported by DCOs

The Commission has considered the comments opposing the creation of required continuation data fields to be reported by DCOs for original swaps. The Commission has also considered ISDA's comment regarding the potential redundancy of having USIs of clearing swaps transmitted in the termination message for the original swap, as well as having the USI of the original swap in the creation data for the clearing swaps.

The Commission believes that reporting the clearing swaps USIs as continuation data for the original swap is an efficient mechanism for linking clearing swaps to the original swap that they replace and should be used for this purpose. New § 45.4(c)(2) will thus require DCOs to include the following additional enumerated data elements when reporting continuation data for original swaps pursuant to proposed § 45.4(c)(1): (i) The legal entity identifier ("LEI") of the SDR to which each clearing swap for a particular original swap was reported by the DCO pursuant to new § 45.3(e); (ii) the USI of the original swap that was replaced by the clearing swaps;[164] and (iii) the USI for the clearing swaps that replace the original swap.

As adopted, these data fields will enable the DCO to fulfill its continuation data reporting obligations, enable the SDR to maintain the accuracy and completeness of swap transaction data, enable the Commission to track the life of a cleared swap transaction, and enable the Commission to monitor compliance with the clearing mandate. In particular, inclusion within an original swap termination message the LEI of the clearing swap SDR will permit the Commission and other regulators to ascertain the SDR where the clearing swaps associated with a particular original swap reside, which will enable the Commission and other regulators to review and more effectively associate data available at multiple SDRs in circumstances where the reporting entity or counterparty selects one SDR for the original swap and the DCO selects a different SDR for the clearing swaps under § 45.3.

Inclusion of the original swap's USI is necessary to enable the original swap SDR to associate continuation data reported by the DCO with the initial creation data reported by a SEF/DCM or reporting counterparty pursuant to § 45.3(a) through (d).[165] These data will

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[160] *See supra*, n. 26, for discussion of reporting obligations for on-facility cleared swaps.

[161] The Commission notes that the approach adopted could generate some degree of data fragmentation, as reports on the original swaps may be housed at a different SDR from reports on its clearing swaps. However, the Commission believes this issue can be overcome for its regulatory purposes—namely risk analysis and market surveillance—if the Commission is able to pull accurate data on individual swaps from each of the registered SDRs. Moreover, accurate reporting of original swap USIs and SDR identities in clearing swaps reporting, and accurate clearing swaps USIs and SDR identities in original swaps terminations, would allow for easy tracking of the lifecycle of a cleared swap transaction.

[162] *See* 17 CFR 39.12(b)(6). Through its rules, the DCO determines whether or not a swap that is submitted for clearing becomes an original swap.

[163] The Commission has also considered LCH's comment that EMIR puts the original swap termination obligation on the original swap parties. Placing reporting obligations on one party under CFTC regulations, and on another party under EMIR, would not create a direct conflict as both parties would be able to satisfy their respective regulatory obligations. The Commission recognizes that this situation could result in two termination messages for the same original swap, but this should not have a negative impact on the quality of SDR data.

[164] *See* existing §§ 45.5(a)(2)(iii), (b)(2)(iii), & (c)(2)(ii) (requiring the entity that created the USI to transmit the USI of a swap to the DCO, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the derivatives clearing organization for clearing purposes). Proposed revisions to § 45.5 are described in Section II.D of this release.

[165] For instance, inclusion of the USI of the original swap in DCO continuation data reporting will permit the SDR receiving such continuation data to associate data regarding a life cycle event such as termination with the existing data maintained for the swap. This will help ensure that data in the SDR remains current and accurate and will enable the Commission and other regulators to ascertain whether a swap remains in existence or

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allow SDRs to validate termination messages reported by DCOs by ensuring that the termination message has the same USI as the original report. Similarly, in the case of clearing swaps that replace an original swap, inclusion of the USIs of the clearing swaps will permit the Commission and other regulators to identify the specific clearing swaps that replaced an original swap, thereby presenting a full history of the cleared swap transaction.

Together, the revisions to § 45.4(b) and the addition of § 45.4(c) will require the reporting of continuation data for original swaps and clearing swaps. Accordingly, the Commission expects that records of original swaps that have been terminated would include the USIs for the clearing swaps that replaced the original swap and the LEI of the clearing swap SDR, such that review of an original swap would permit the identification of the resulting clearing swaps and the SDR where they resides. These provisions will reflect the regulations applicable to DCOs outlined in part 39 of the Commission's regulations and will clearly delineate the continuation data reporting obligations associated with each swap involved in a cleared swap transaction.[166]

The Commission is mindful of LCH's suggestion that there be an industry-wide standard for original swap termination messages and DTCC's comment that termination reports often do not comply with SDR specifications. To help DCOs comply with the requirements of amended § 45.4, the Commission encourages DCOs and SDRs to develop an industry-wide standard for original swap termination messages. The Commission anticipates that original swap termination messages could be standardized given the limited number of data elements that must be transmitted, such as clearing swap USIs, DCO LEIs, and clearing swap SDR LEIs. Standardization also would alleviate LCH's concern that the original swap's SDR would become a factor in determining whether a swap was eligible for clearing.

The Commission has also considered conflicting comments on whether original swap terminations should be reported at the end of the day or as soon as technologically practicable. The Commission has determined to adopt the amendment as proposed and require reporting original swap terminations at the end of the day, as this would be consistent with reporting other types of continuation data under § 45.4.

v. Revisions to § 45.4(d)

The Commission received no comments on the proposed revisions to § 45.4(d), and is adopting those revision as proposed.

D. Unique Swap Identifiers—Amendments to Section 45.5

1. Existing § 45.5

Existing § 45.5 requires that each swap subject to the Commission's jurisdiction be identified in all recordkeeping and all swap data reporting by the use of a USI. The rule establishes different requirements for the creation and transmission of USIs depending on whether the swap is executed on a SEF or DCM (§ 45.5(a)), executed off-facility with an SD or MSP reporting counterparty (§ 45.5(b)), or executed off-facility with a non-SD/MSP reporting counterparty (§ 45.5(c)). Existing § 45.5 provides that for swaps executed on a SEF or DCM, the SEF or DCM creates the USI, and for swaps not executed on a SEF or DCM, the USI is created by an SD or MSP reporting counterparty, or by the SDR if the reporting counterparty is not an SD or MSP.[167]

With the exception of swaps with a non-SD/MSP reporting counterparty, the existing rule generally requires USI creation and transmission to be carried out by the entity or counterparty required to report all required swap creation data for the swap. Existing § 45.5 thus does not distinguish between original and clearing swaps, does not provide USI creation and transmission requirements specifically for DCOs, and consequently does not provide for the issuance to DCOs of a USI "namespace," which is one of two component parts of a USI.[168]

The Commission understands that, in practice, SEFs/DCMs and reporting counterparties, or SDRs in the case of non-SD/MSP reporting counterparties, generate and assign USIs for swaps that would become original swaps under the proposed rules, and that DCOs generate and assign USIs to swaps that would qualify as clearing swaps in connection with reporting required swap creation data for clearing swaps to SDRs.

2. Proposed Amendments to § 45.5

The Commission proposed to renumber existing § 45.5(d) as § 45.5(e), and to create a new § 45.5(d) that would set forth requirements regarding the creation and transmission of USIs for clearing swaps.[169]

As proposed, § 45.5(d)(1) would require a DCO to generate and assign a USI for each clearing swap upon, or as soon as technologically practicable after, acceptance of an original swap by the DCO for clearing (or execution of a clearing swap that does not replace an original swap), and prior to reporting the required swap creation data for each clearing swap.[170] Proposed § 45.5(d)(1) would also require that the USI for each clearing swap consist of two data components: A unique alphanumeric code assigned to the DCO by the Commission for the purpose of identifying the DCO with respect to USI creation, and an alphanumeric code generated and assigned to that clearing swap by the automated systems of the DCO. These proposed USI creation requirements and data components for DCOs and clearing swaps are consistent with those currently required by part 45 for other registered entities such as SEFs, DCMs, and SDRs.[171]

As proposed, § 45.5(d)(2) would require a DCO to transmit the USI for a clearing swap electronically to the SDR to which the DCO reports required swap creation data for the clearing swap, as part of that report, and to the DCO's counterparty with respect to that clearing swap, as soon as technologically practicable after either acceptance of the original swap by the DCO for clearing or execution of a clearing swap that does not replace an original swap.[172]

Finally, the Commission proposed to amend §§ 45.5(a), 45.8(f), and 45.10(a) to incorporate the language "or pursuant to the rules of" to the phrase "swaps executed on a swap execution facility or designated contract market" to make clear that those provisions currently apply to all swaps executed on or pursuant to the rules of a SEF or DCM.[173]

3. Comments Received

The Commission received several comments regarding its proposed amendments to § 45.5.[174] All comments

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has been extinguished upon acceptance for clearing by a DCO.

[166] *See* 17 CFR 39.12(b)(6). Part 45 currently requires all swap data and information reported to and maintained by an SDR regarding a given swap to be "current and accurate" and to include "all changes" to a swap. *See* 17 CFR 45.4(a).

[167] *See* 17 CFR 45.5(a)–(c).

[168] *See, e.g.,* 17 CFR 45.5(a)(1)(i), (b)(1)(i) and (c)(1)(i) (the data component of a USI commonly referred to as a namespace is the unique alphanumeric code assigned to the registered entity responsible for generating the USI for the purpose of identifying such registered entity with respect to USI creation).

[169] The Commission also proposes conforming amendments to renumber existing § 45.5(e) as § 45.5(f).

[170] *See* 80 FR 52544, 52554.

[171] *See, e.g.,* 17 CFR 45.5(a), 45.5(c).

[172] *See* 80 FR 52544, 52554.

[173] *See* 80 FR 52544, 52554.

[174] ITV requested that the Commission remove the obligation for SDRs, when a swap is executed

received were supportive of the amendment to § 45.5(d)(1), which requires DCOs to generate USIs for clearing swaps.[175]

FSR requested that the Commission adopt ISDA best practices for identifying international swaps, including allowing for the use of a USI as a unique transaction identifier ("UTI") for reporting swaps in other jurisdictions.[176] FSR commented that adopting the ISDA best practice concerning USIs would avoid potential double-counting when an international swap is reported to two separate SDRs in two jurisdictions.[177]

ISDA commented that, in principal model clearing, the DCO should ensure that both the DCO's clearing member and the ultimate counterparty (if not the clearing member) receive the clearing swap USIs.[178] ISDA further noted that the current Orders of Exemption issued to foreign DCOs do not include an obligation for those exempt DCOs to generate the USIs for reportable clearing swaps.[179]

4. Final Rule Text of § 45.5

Having considered the comments relating to the purpose and scope of the proposed amendments to § 45.5, the Commission is adopting amended § 45.5 as proposed. The proposed § 45.5(d) provisions that would govern creation and assignment of USIs by the DCO with respect to clearing swaps would be consistent with the Commission's "first-touch" approach to USI creation for SEFs, DCMs, SDs, MSPs, and SDRs.[180]

The Commission notes ISDA's request for guidance on whether DCOs must ensure, in the principal clearing mode, that the ultimate counterparty (when not the clearing member) receive the USI of the clearing swaps. As noted above, the Commission is aware of various issues relating to reporting of principal model clearing but will not offer further guidance at this time. The Commission notes ISDA's comment that the current Orders of Exemption for foreign DCOs do not include a requirement that the DCO generate USIs for reportable clearing swaps. Finally, the Commission notes FSR's request for the Commission to align the use of USIs and UTIs for reporting international swaps. While the Commission declines to address the issue in this release as it is beyond the scope of the NPRM, the Commission is cognizant of the need to harmonize reporting across jurisdictions and will continue to work with other regulators to address this and other issues.

E. Determination of Which Counterparty Must Report—Amendments to § 45.8

1. Existing § 45.8

Existing § 45.8 sets forth a hierarchy under which the reporting counterparty for a particular swap depends on the nature of the counterparties involved in the transaction. Regulation 45.8 assigns a reporting counterparty for off-facility swaps, for which the reporting counterparty must report all required swap creation data, as well as for swaps executed on or pursuant to the rules of a SEF or DCM, for which the SEF or DCM must report all required swap creation data.

2. Proposed Amendments to § 45.8

The Commission proposed to add paragraph (i) to § 45.8 in order to explicitly provide that the DCO will be the reporting counterparty for clearing swaps.[181] The Commission also proposed to amend the introductory language of § 45.8 to make clear that the reporting counterparty for all swaps except clearing swaps will be made as provided in paragraphs (a) through (h) of § 45.8, while the reporting counterparty for clearing swaps will be made as provided in paragraph (i) of § 45.8. The Commission further proposed to remove the language "if available" from § 45.8(h)(1)(i) to ensure consistency with proposed changes to appendix 1 to part 45. As discussed below in addressing changes to the PET data fields in appendix 1, the "if available" language was only relevant prior to availability of the LEI system.[182]

The Commission proposed to further amend § 45.8 to remove part of paragraphs (d)(1) and (f)(1) and to remove part of paragraph (h)(2) and all of paragraphs (h)(2)(i) and (ii), which require SEFs to notify counterparties to a swap if it cannot determine who would be the reporting counterparty. Finally, the Commission proposed conforming changes to explanatory notes in the PET data tables in appendix 1 to part 45 that reference the situation described in § 45.8(h)(2).

3. Comments Received

The Commission received six comments in connection with its proposed amendments to § 45.8. One commenter supported proposed § 45.8(i) as it would promote efficiency in reporting by explicitly designating the DCO as the reporting party for clearing swaps.[183]

ISDA noted a potential inconsistency between reporting obligations under parts 43 and 45 for clearing swaps, as DCOs are not included in the hierarchy under § 43.3 for determining reporting party of real-time reporting.[184] ISDA suggested that this could result in duplicative reporting obligations for DCOs and clearing members in situations where a clearing swap does not replace an original swap.

EEI/EPSA requested that the Commission not remove, as proposed, the provisions in §§ 45.8(d)(1) and (f)(1), which currently require the counterparties to select the reporting party, where the swap is executed on a SEF or DCM and both counterparties have the same SD, MSP or financial entity status.[185] The commenter requested that the provisions be left in place because the proposed rule did not set out how the reporting party would be determined. ITV argued that the reporting hierarchy in existing §§ 45.8(c) and (e), when applied to uncleared swaps between end-users, particularly in the commodity asset class, can preclude end-users from negotiating between themselves who the reporting party would be.[186] This may result in the selection of a reporting party who has less technical infrastructure than the non-reporting counterparty.[187] ISDA recommended that the Commission encourage SEFs to adopt the ISDA asset class tie-breaker logic (the "ISDA RCP") for determining reporting party for on-SEF swaps.[188]

Two commenters noted that, with the addition of proposed § 45.8(i)

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between two non-SD/MSPs and the SDR is obligated to create the USI, to transmit the USI to the counterparties. ITV commented that this could create obligations for SDRs to transmit information to parties not enrolled with the SDR. The Commission has noted this comment, but it is beyond the scope of the NPRM.

[175] *See* ITV Oct. 30, 2015 Letter, at 3 (but noting that generation of the USI for a clearing swap by the SDR would slow acceptance of swaps in the clearing process); ISDA Oct. 30, 2015 Letter, at 7 (also suggesting that the Commission require the namespace component of USIs for each DCO be made publicly available); AIMA Oct. 30, 2015 Letter, at 7.

[176] *See* FSR Oct. 30, 2015 Letter, at 4.

[177] *See id.*

[178] *See* ISDA Oct. 30, 2015 Letter, at 6.

[179] *See* ISDA Oct. 30, 2015 Letter, at 6.

[180] *See* Final Part 45 Rulemaking, 77 FR 2136, 2158 (Jan. 13, 2012). The Commission's approach with respect to SEFs, DCMs, SDs, MSPs, and SDRs was designed to foster efficiency by taking advantage of the technological sophistication and capabilities of such entities, while ensuring that a swap is identified by a USI from its inception.

[181] *See* 80 FR 52544, 52554–55.

[182] *See, infra,* Section II.H.1.i.

[183] *See* AIMA Oct. 30, 2015 Letter, at 6.

[184] *See* ISDA Oct. 30, 2015 Letter, at 7.

[185] *See* EEI/EPSA Oct. 30, 2015 Letter, at 4.

[186] *See* ITV Oct. 30, 2015 Letter, at 4 and 6.

[187] ITV also commented that it believes counterparties should be permit to select the reporting party for a swap when both counterparties are non-SD/MSPs, regardless of financial entity status or U.S. person status. *See* ITV Oct. 30, 2015 Letter, at 4.

[188] *See* ISDA Oct. 30, 2015 Letter, at 7.

addressing the reporting of clearing swaps, the phrase "or is cleared by a derivatives clearing organization" in § 45.8(f) would become inapplicable.[189] The commenters recommended that the Commission remove this clause from existing § 45.8(f).

4. Final Rule Text of § 45.8

For the reasons expressed more fully below, the Commission has decided to adopt the amendments to § 45.8 as proposed.

The Commission has considered ISDA's comment that the inclusion of DCOs in the part 45 reporting hierarchy could create inconsistencies between part 43 and part 45 reporting obligations for clearing swaps that do not replace original swaps. Existing § 43.3(a)(3) sets out the reporting hierarchy for real-time reporting of off-facility swaps. DCOs are not included in this hierarchy, but the hierarchy is applicable unless otherwise agreed to by the parties prior to the execution of the publicly reportable swap transaction.[190] To the extent that clearing swaps are reportable events under part 43, the Commission notes that DCOs and their clearing members could agree that the DCO should be the reporting party for part 43 purposes pursuant to the "unless otherwise agreed" clause of § 43.3(a)(3). It is only if the DCO and its clearing member did not so agree would the clearing member have part 43 reporting obligations for some clearing swaps pursuant to the reporting hierarchy under § 43.3. The Commission therefore declines in this rule release to include DCOs in the part 43 real-time reporting hierarchy.

The Commission has also considered comments from EEI/EPSA and ITV regarding the removal of provisions in §§ 45.8(d)(1) and (f)(1) governing the selection of reporting parties for swaps executed on SEFs and DCMs. As was explained in the preamble to the NPRM, the Commission proposed to remove these provisions to help preserve parties' anonymity on SEFs and DCMs, in particular for swaps cleared through a straight-through-processing mechanism.[191] SEFs have adopted various formulas to determine who will be the reporting party when both counterparties have the same SD, MSP, financial entity, and U.S. Person status. These formulas will ensure that reporting parties are selected consistently. Therefore, the Commission is adopting amendments to §§ 45.9(d)(1) and (f)(1) as proposed. In addressing ISDA's comment regarding the ISDA RCP, the Commission declines to adopt or impose any particular formula at this time for selecting the reporting party, instead leaving such determinations to the SEFs.

The Commission has also considered EEI/EPSA's and CMC's comments regarding the continued inclusion of the phrase "or is cleared by a derivatives clearing organization" in § 45.8(f). The Commission notes that existing § 45.8(f) addresses reporting hierarchy for certain categories of reportable swaps executed between two non-U.S. Persons; one category of such reportable swaps is a swap cleared through a DCO. The Commission notes that the swap "cleared by a derivatives clearing organization" in this provision relates to the original swap between the original counterparties, and not the clearing swaps with the DCO. The Commission is adopting § 45.8(f) as proposed, with the continued inclusion of the phrase "cleared by a derivatives clearing organization."

F. Reporting to a Single Swap Data Repository—Amendments to § 45.10

1. Existing § 45.10

Existing § 45.10 requires "all swap data for a given swap" to be reported to a single SDR, which must be the same SDR to which creation data for that swap is first reported. The time and manner in which such data must be reported to a single SDR depends on whether the swap is executed on a SEF or DCM,[192] executed off-facility with an SD/MSP reporting counterparty,[193] or executed off-facility with a non-SD/MSP reporting counterparty.[194] Currently, § 45.10(b) and (c) also provide circumstances in which a reporting counterparty is excused from reporting PET data to an SDR because the swap is accepted for clearing by a DCO before the applicable reporting deadline.

2. Proposed Amendments to § 45.10

In order to further clarify that "all swap data for a given swap" encompasses all swap data required to be reported pursuant to parts 43 and 45 of the Commission's regulations, the Commission proposed to add language to this effect to paragraphs (a) through (c) and to the introductory language of § 45.10.[195] This proposed additional language would clarify the existing requirement that registered entities and reporting counterparties must provide all swap data required under parts 43 and 45 to a single SDR for a given swap.[196]

The Commission also proposed to remove § 45.10(b)(2) and (c)(2),[197] which are no longer applicable because they reference provisions in § 45.3(b)(1), (c)(1)(i), and (c)(2)(i) that, as discussed above, the Commission proposed to remove.[198]

Additionally, the Commission proposed to add new § 45.10(d), which would govern clearing swaps and would establish explicit requirements that DCOs report all required swap creation data and all required swap continuation data for each clearing swap to a single SDR.[199] Specifically, proposed § 45.10(d)(1) would require a DCO to report all required swap creation data for a particular clearing swap to a single SDR. As proposed, § 45.10(d)(1) would also require the DCO to transmit the LEI of the SDR to which it reported the required swap creation data for each clearing swap to the counterparty of each clearing swap, as soon as technologically practicable after either acceptance of the original swap by the DCO for clearing or execution of a clearing swap that does not replace an original swap.[200]

As proposed, § 45.10(d)(2) would require a DCO to report all required swap creation data and all required swap continuation data for a particular clearing swap to the same SDR that received the initial swap creation data for the clearing swap required by § 45.10(d)(1). In the event there are two or more clearing swaps that replace a particular original swap, and in the event there are equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, proposed § 45.10(d)(3) would require the DCO to report all required swap creation and continuation data for each such clearing swap to a single SDR.[201]

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[189] *See* EEI/EPSA Oct. 30, 2015 Letter, at 4; CMC Oct. 30, 2015 Letter, at 3.

[190] 17 CFR 43.3(a)(3).

[191] *See* 80 FR 52544, 52555.

[192] *See* 17 CFR 45.10(a).

[193] *See* 17 CFR 45.10(b)

[194] *See* 17 CFR 45.10(c).

[195] *See* 80 FR 52544, 52555–56.

[196] The Commission also proposed to repeat the language "Off-facility swaps with a swap dealer or major swap participant reporting counterparty" from the title of § 45.10(b) in the body of that regulation to make clear that the requirement pertains to off-facility swaps with an SD or MSP.

[197] The Commission also proposed conforming amendments to § 45.10 to renumber paragraph (b)(3) as (b)(2), paragraph (c)(3) as (c)(2), and paragraph (c)(4) as (c)(3). The Commission also proposed to remove a reference to § 45.10(c)(2) from existing § 45.10(c)(4) because the Commission proposed to remove § 45.10(c)(2).

[198] *See* Section II.B.2.ii, *supra*.

[199] *See* 80 FR 52544, 52555–56.

[200] *See* 80 FR 52544, 52555–56.

[201] The Commission notes that proposed § 45.10(d)(3) would require any equal and opposite clearing swaps, including those resulting from the operation of § 39.12(b)(6) of the Commission's regulations, to be reported to a single SDR, regardless of whether such clearing swaps replaced an original swap.

Accordingly, all required creation and continuation data for all clearing swaps that can be traced back to the same original swap (and for all equal and opposite clearing swaps that are created upon execution of the same transaction but that do not replace an original swap) will be reported to a single SDR.

The Commission noted in its proposal that by operation of proposed new § 45.8(i) and (j) and proposed § 45.3(e), there may be scenarios in which the SEF/DCM or reporting counterparty reports required swap creation data for the swap that became the original swap to one SDR, and the DCO reports required swap creation data for the clearing swaps that replace the original swap to a different SDR.[202] The Commission proposed to require that all swap data for the clearing swaps that can be traced back to the same original swap be reported to the same SDR, but did not require that the clearing swaps be reported to the same SDR as the original swap.[203]

The Commission included in the NPRM the following example to illustrate the application of proposed § 45.10:[204]

Swap 1 is intended to be submitted to a DCO for clearing and executed on or pursuant to the rules of a SEF. The SEF reports all required creation data for such swap to registered SDR A pursuant to § 45.3(a), which was selected by the SEF pursuant to proposed § 45.3(j)(1), and submits the swap to the DCO for clearing. Upon acceptance of Swap 1 for clearing, the DCO extinguishes Swap 1 and replaces it with Swap 2 and Swap 3, both of which are clearing swaps. Swap 1 is now an original swap.

Proposed § 45.4(c) would require the DCO to report the termination of Swap 1 to SDR A,[205] reflecting that Swap 1, now an original swap, has been terminated through clearing novation.[206] The DCO would also report all required swap creation data for clearing Swap 2 to a single SDR of its choice (say, for example, SDR B) pursuant to proposed §§ 45.3(e) and (j)(2), and 45.10(d).[207] Similarly, the DCO would be required to report all required swap creation data for clearing Swap 3 to a single SDR, in this case SDR B. Pursuant to proposed § 45.10(d)(3), the DCO would be required to report all required swap creation data for clearing Swap 2 and clearing Swap 3 to the same SDR (SDR B) because Swap 2 and Swap 3 replaced Swap 1. Thereafter, proposed § 45.10(d)(2) would require the DCO to report all required swap creation data and continuation data to the SDR where the first report of required swap creation data for both clearing Swap 2 and clearing Swap 3 was made (SDR B).

3. Comments Received

The Commission received three comments addressing its proposed amendments to § 45.10.[208] AIMA supported the Commission's proposal clarifying that the DCO is obligated to report creation and continuation data for clearing swaps to a single SDR.[209]

ISDA opposed the requirement in proposed § 45.10(d)(1) that a DCO transmit to the counterparties of clearing swaps the LEI of the SDR to which the clearing swaps were reported.[210] ISDA doubted the value of such information for the clearing swap counterparties, and opined that counterparties are unlikely to build mechanisms to retain such information on a transactional basis.[211] ISDA also noted that a DCO would be separately required to send a termination of the original swap to the original swap's SDR, and this report would include the LEI of the SDR to which the clearing swaps are reported, making a report of such data to the counterparties redundant.[212]

DTCC opposed the provision in proposed § 45.10(d)(1) that would allow a DCO to select the SDR for reporting clearing swaps, instead arguing that clearing swaps should be reported to the same SDR as the original swap.[213] DTCC argued that such reporting would create data fragmentation between the original swap and related clearing swaps.

4. Final Rule Text of § 45.10

Having considered all of the comments relating to the purpose and scope of the proposed amendments to § 45.10, including amendments to §§ 45.10(a) through (c) and new § 45.10(d), the Commission is adopting amended § 45.10 as proposed. The requirements for DCOs demonstrated in the above example and contained in proposed § 45.10(d)(1) and (2) are consistent with the existing requirements for SEFs, DCMs, and other reporting counterparties under current § 45.10. By requiring that all swap data for each clearing swap be reported to a single SDR, proposed §§ 45.10(d)(1) and (2) further the Commission's stated purpose in creating § 45.10, and part 45 generally, of reducing fragmentation of data for a given swap across multiple SDRs.[214]

The proposed requirement in §§ 45.10(d)(3) that the DCO report to a single SDR all swap data for each clearing swap that can be traced back to the same original swap also supports the goal of avoiding fragmentation of swap data. Though clearing swaps are new individual swaps, all clearing swaps that issue from the same original swap are component parts of a cleared swap transaction. Fragmentation among clearing swaps would needlessly impair the ability of the Commission and other regulators to view or aggregate all the data concerning the related clearing swaps.

While proposed § 45.10 ensures that each swap comprising a cleared swap transaction is reported to a single SDR, the Commission notes DTCC's comments on data fragmentation where original swaps are reported to different SDRs than their resulting clearing swaps. However, as long as DCOs properly identify the original swap's USI and SDR in reports on clearing swaps, and report clearing swaps' USIs and SDR in terminations of the original swaps, the Commission believes it will be able to reconcile those transactions when performing risk and other analysis. As discussed in Section II.C.4.iii above, the Commission has considered various alternatives to the adopted rules. The Commission believes that the adopted amendments will provide the Commission with the information it needs to perform its regulatory obligations while minimizing costs to market participants, SDRs, and DCOs.

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[202] *See* 80 FR 52556.

[203] *See id.*

[204] *See* 80 FR 52544, 52556.

[205] Pursuant to proposed § 45.10(a)(2), (b)(2), and (c)(3), continuation data for original swaps must be reported to the SDR where the first report of required swap creation data was made for the swap.

[206] Pursuant to existing § 45.13(b), the DCO shall use the facilities, methods, or data standards provided or required by SDR A. 17 CFR 45.13(b).

[207] The Commission notes that pursuant to proposed §§ 45.10(a)–(d), the DCO in this example could select an SDR other than SDR A.

[208] An additional comment letter addressed the issue of "portability" of swaps reporting between SDRs. *See* ITV Oct. 30, 2015 Letter, at 3–4. The portability issue is beyond the scope of the NPRM.

[209] *See* AIMA Oct. 30, 2015 Letter, at 7.

[210] *See* ISDA Oct. 30, 2015 Letter, at 8.

[211] *Id.*

[212] *Id.*

[213] *See* DTCC Oct. 30, 2015 Letter, at 6.

[214] *See, e.g.,* Final Part 45 Rulemaking, 77 FR 2136, 2139 ("To avoid fragmentation of data for a given swap across multiple SDRs, the [Notice of Proposed Rulemaking] [for part 45] would require that all data for a particular swap must be reported to the same SDR."); at 2143 ("First, in order to prevent fragmentation of data for a single swap across multiple SDRs, which would seriously impair the ability of the Commission and other regulators to view or aggregate all of the data concerning the swap, the proposed rule provided that, once an initial data report concerning a swap is made to an SDR, all data reported for that swap thereafter must be reported to the same SDR."); and at 2168 ("The Commission believes the important regulatory purposes of the Dodd-Frank Act would be frustrated, and that regulators' ability to see necessary information concerning swaps could be impeded, if data concerning a given swap was spread over multiple SDRs.").

In response to ISDA's comment that counterparties were unlikely to build mechanisms to retain information on the SDR to which clearing swaps were reported, the Commission believes that all swaps counterparties should be aware of the SDR to which their swaps are reported. The Commission notes that under existing § 45.14(b) non-reporting parties to swaps have obligations to correct any errors or omissions in swaps data of which they become aware.

G. Examples of Cleared Swap Reporting Workflows Under the Adopted Revisions

The following examples demonstrate the manner in which the adopted revisions and additions to part 45 rules would operate in hypothetical scenarios involving: (1) An off-facility swap not subject to the clearing requirement with an SD/MSP reporting counterparty; and (2) a swap executed on or pursuant to the rules of a SEF or DCM. All references to part 45 appearing in the following examples refer to the rules as adopted in this release. These examples are provided only for illustrative purposes to demonstrate the applicability of certain rules adopted in this release in hypothetical scenarios. The examples are not intended to dictate any aspect of compliance, reporting or other related processes and are not intended to cover all possible reporting circumstances.

1. Off-Facility Swap Not Subject to the Clearing Requirement With SD/MSP Reporting Counterparty

An off-facility swap that is not subject to the clearing requirement is executed with an SD reporting counterparty. The SD generates and assigns a USI for the swap pursuant to § 45.5(b) and reports all required swap creation data for the swap to SDR A pursuant to § 45.3(c). The SD submits the swap to a DCO for clearing and, pursuant to § 45.10(b), transmits to the DCO, at the time the swap is submitted for clearing, the identity of SDR A and the USI for the swap.

The DCO accepts the swap for clearing, extinguishing it and replacing it with clearing swaps; the swap that was submitted for clearing is now an original swap. The DCO generates and assigns a USI to each clearing swap pursuant to § 45.5(d) and, pursuant to § 45.3(e), reports all required swap creation data for the clearing swaps, including the original swap USI and all additional data fields applicable to clearing swaps,[215] to SDR B, which the DCO in this example selected pursuant to § 45.3(j)(2).

Pursuant to § 45.4(c), the DCO would report continuation data for the original swap, including the original swap termination notice, to SDR A using either the life cycle or state data methods, and using the facilities, methods, or data standards provided or required by SDR A.[216] In addition to all other necessary continuation data, original swap continuation data reported by the DCO, including the original swap termination notice, would also include: The LEI of SDR B (the SDR to which creation data for each clearing swap that replaced the particular original swap was reported);[217] the USI of the original swap as transmitted to the DCO by the SD at the time the swap was submitted for clearing; and the USI for each clearing swap.

The DCO would also transmit to each counterparty to the clearing swaps, as soon as technologically practicable after acceptance for clearing, the USI of each clearing swap pursuant to § 45.5(d)(2) and the LEI of the SDR to which the clearing swap was reported pursuant to § 45.10(d)(1).

The DCO would have no further continuation data reporting obligations with respect to the original swap thereafter. However, the Commission notes that pursuant to § 45.14, registered entities and counterparties required to report swap data to an SDR must report any known errors and omissions in the data reported.[218] Additionally, non-reporting counterparties are required to notify the reporting counterparty of such errors or omissions.[219] Finally, pursuant to § 49.10(a), SDR A would be required to accept and record any original swap continuation data, including the original swap termination.

2. Swaps Executed on or Pursuant to the Rules of a SEF or DCM

A swap is executed on or pursuant to the rules of a SEF or DCM. The SEF/DCM generates and assigns a USI for the swap pursuant to § 45.5(a) and reports all required swap creation data to SDR A pursuant to § 45.3(a). The SEF/DCM submits the swap to a DCO for clearing and, pursuant to § 45.10(a), transmits to the DCO, at the time the swap is submitted for clearing, the identity of SDR A and the USI for the swap.

The DCO accepts the swap for clearing, extinguishing it and replacing it with clearing swaps; the swap that was submitted for clearing is now an original swap. Under §§ 45.5(d) and 45.3(e), the DCO would generate and assign a USI to each clearing swap and report all required swap creation data, including the original swap USI and all additional data fields applicable to clearing swaps, for the clearing swaps to registered SDR A, which, in this example, the DCO selected pursuant to § 45.3(j)(2).[220]

Pursuant to § 45.4(c), the DCO would report continuation data for the original swap, including the original swap termination notice, to SDR A using either the life cycle or state data methods, and using the facilities, methods, or data standards provided or required by SDR A. Such continuation data would include the LEI of SDR A (the SDR to which creation data for each clearing swap that replaced the particular original swap was reported), the USI of the original swap as transmitted to the DCO by the SEF/DCM at the time the swap was submitted for clearing, and the USI for each clearing swap.

The DCO would also transmit to each counterparty to the clearing swaps, as soon as technologically practicable after acceptance for clearing, the USI of each clearing swap pursuant to § 45.5(d)(2) and the LEI of the SDR to which the clearing swap was reported pursuant to § 45.10(d)(1).

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[215] Modifications to appendix 1 would require that PET data include the original swap USI and all data categories and fields applicable to clearing swaps. *See infra,* Section II.H.3.

[216] *See* 17 CFR 45.13(b).

[217] The Commission notes that the amended § 45.4(c)(2)(i) requirement that the DCO include the LEI of the SDR to which all required swap creation data for each clearing swap was reported by the DCO applies whether or not swap data for the original and clearing swaps is reported to the same SDR or to different SDRs. The Commission expects that this information will be useful for regulators with respect to their review of data pertaining to cleared swap transactions, and to SDRs with respect to their processing of swap data received, even when the original and clearing swaps reside in the same SDR.

[218] While the DCO would have no additional continuation data reporting requirement with respect to the original swap after reporting the termination upon acceptance for clearing, the DCO remains obligated under § 45.14 to correct errors and omissions in the data reported by the DCO, including the termination notice. For example, if a swap is submitted to, and accepted by, a DCO for clearing, the DCO would report the termination notice of the original swap to the SDR to which the creation data for the original swap was reported. After submission of the termination notice to the SDR, if the DCO should become aware of an error or omission in the termination notice, the DCO is required, pursuant to § 45.14, to correct any errors and omissions in the data so reported as soon as is technologically practicable after discovery of such errors or omissions. Likewise, all reporting entities and swap counterparties also remain obligated under § 45.14 to correct errors and omissions in all data reported by or on behalf of each entity and swap counterparty to an SDR.

[219] Pursuant to § 45.14(b), if a counterparty to a swap that is not the reporting counterparty as determined by § 45.8 discovers any error or omission with respect to the continuation data, including termination notice of the original swap, such non-reporting counterparty is required to notify the DCO of each such error or omission.

[220] Pursuant to § 45.3(j)(2), the DCO could have selected SDR B.

The DCO would have no further continuation data reporting obligations with respect to the original swap thereafter. However, the Commission notes that pursuant to § 45.14, registered entities and counterparties required to report swap data to an SDR must report any known errors and omissions in the data reported. Additionally, non-reporting counterparties are also required to notify the reporting counterparty of such errors or omissions.[221] Finally, pursuant to § 49.10(a), SDR A would be required to accept and record the original swap termination.

H. Primary Economic Terms Data—Amendments to Appendix 1 to Part 45—Tables of Minimum Primary Economic Terms

The Commission's existing lists of minimum primary economic terms for swaps in each swap asset class are found in tables in Exhibits A–D of appendix 1 to part 45. Those tables include data elements that reflect generic economic terms and conditions common to most standardized products. They reflect the fact that PET data captures a swap's basic nature and essential economic terms, and are provided in order to ensure to the extent possible that all such essential terms, where applicable, are included when required primary economic terms are reported for each swap.

1. Proposed Amendments and Additions to Primary Economic Data Fields

The Commission proposed the following revisions to Exhibits A–D of appendix 1, each of which is discussed in greater detail below: (1) Modifications to existing PET data fields; (2) the addition of three new PET data fields applicable to all reporting entities for all swaps; and (3) the addition of a number of new data fields that must be reported by DCOs for clearing swaps.[222]

i. Proposed Modifications to Existing PET Data Fields

The Commission proposed clarifying and conforming changes and minor corrective modifications to the following existing PET data fields:[223]

- The Unique Swap Identifier for the swap—The Commission proposed to remove the explanatory note in the Comment section to this data field in Exhibits A–D. The explanatory note is no longer necessary because under proposed § 45.5(d), the DCO would create the USI for each clearing swap.
- PET data fields that utilize a LEI[224]—The Commission proposed conforming changes to the Comment sections to data fields in Exhibits A–D that utilize the LEI to reflect that the CFTC has designated an LEI system[225] and to reflect that a substitute identifier may be reported for natural person swap counterparties.
- If no CFTC-approved LEI for the non-reporting counterparty is yet available, the internal identifier for the non-reporting counterparty used by the swap data repository—The Commission proposed to remove this data field in each of the Exhibits. As noted above, the CFTC has designated an LEI, and these PET data fields are no longer applicable.
- For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported—The Commission proposed to add an explanatory note to the Comment section for this data field in Exhibits A–D providing that the field value is the LEI of the other SDR to which the swap is or will be reported.
- Block trade indicator—The Commission proposed to modify the Comment section to this data field in Exhibits A–D to reflect that the CFTC has issued a final rulemaking regarding *Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades*.[226]
- Execution venue—The Commission proposed to modify the explanatory note in the Comment section to this data field in Exhibits A–D to reflect that the CFTC has designated an LEI system and to require the reporting of only the LEI of the SEF or DCM for swaps executed on or pursuant to the rules of a SEF or DCM.
- Clearing indicator—The Commission proposed modifications to the explanatory note in the Comment section to this data field in Exhibits A–D to provide for the reporting of a Yes/No indication of whether the swap will be submitted for clearing to a DCO.
- Clearing venue—The Commission proposed modifications to the Comment section of this data field in Exhibits A–D to provide for the reporting of only the LEI of the derivatives clearing organization.

ii. Proposed Addition of New PET Data Fields Applicable to All Reporting Entities for All Swaps

The Commission proposed to add to Exhibits A–D the following new PET fields which would be applicable to all reporting entities for all swaps:[227]

- Asset class—This data field would provide the specific asset class for the swap. Field values: Credit, equity, FX, interest rates and other commodities.
- An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.
- Clearing exception or exemption type—This field would provide the type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.

iii. Proposed Addition of New PET Data Fields Applicable to DCOs for Clearing Swaps

The Commission also proposed to modify Exhibits A–D in order to add new PET fields specifically to be reported by DCOs for clearing swaps.[228] The proposed data fields that must be reported by DCOs for clearing swaps include the following:

- Clearing swap USIs—This data field would provide the USI for each clearing swap that replaces the original swap, other than the USI for which the PET data is currently being reported.

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[221] *See* notes 220–221, *supra*.

[222] The Commission also proposes to revise each of the data categories and fields that reference the clearing requirement exception in CEA section 2(h)(7) to reflect that exceptions to, and exemptions from, the clearing requirement, including the clearing requirement exception in CEA section 2(h)(7), are set forth under part 50 of the Commission's regulations. Additionally, the Commission is making non-substantive edits to the following fields in Exhibits A–D: Asset class; For a multi-asset class swap, an indication of the primary asset class; For a multi-asset class swap, an indication of the secondary asset class(es); and to the Clearing member client account field in Exhibits C and D.

[223] *See* 80 FR 52544, 52558.

[224] These include the following fields in Exhibits A–D: The Legal Entity Identifier of the reporting counterparty; If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent; The Legal Entity Identifier of the non-reporting party; Clearing venue; The identity of the counterparty electing an exception or exemption to the clearing requirement under Part 50 of this chapter (formerly The identity of the counterparty electing the clearing requirement exception in CEA section 2(h)(7)); Exhibit A: An indication of the counterparty purchasing protection; An indication of the counterparty selling protection; Information identifying the reference entity; Exhibit D: Buyer, Seller.

[225] The explanatory notes discussing a situation where no CFTC designated LEI is yet available are no longer applicable. *See generally* Order Extending the Designation of the Provider of Legal Entity Identifiers To Be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations, 80 FR 44078 (Jul. 24, 2015).

[226] *See, generally,* Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, Final Rule, 78 FR 32866 (May 31, 2013).

[227] *See* 80 FR 52544, 52558–59.

[228] *See* 80 FR 52544, 52559.

- Original swap USI—This data field would provide the USI for the original swap that was replaced by clearing swaps.[229]
- Original swap SDR—This data field would provide the LEI of the SDR to which the original swap was reported.[230]
- Clearing member LEI—This data field would provide the LEI of the clearing member.
- Clearing member client account—This data field would provide the account number for the client, if applicable, of the clearing member.
- Origin (house or customer)—This data field would provide information regarding whether the clearing member acted as principal for a house trade or agent for a customer trade.
- Clearing receipt timestamp—This data field would provide the date and time at which the DCO received the original swap that was submitted for clearing.
- Clearing acceptance timestamp—This data field would provide the date and time at which the DCO accepted the original swap that was submitted for clearing.

3. Comments Received

i. General Comments

Eurex commented that there are no additional fields for clearing swaps beyond those proposed which are necessary to understand a clearing swap or the mechanics of the clearing process.[231] JBA cautioned that the definitions used in the markets are not always consistent with those proposed by the NPRM, which places a significant burden on small-sized market participants.[232] JBA also noted potential difficulties in reporting hybrid instruments because swaps with multiple underlying assets may have their own market conventions that do not fall under the categories in the proposed rules.[233]

Several commenters addressed how PET data fields can operate in the context of agency and principal clearing models. LCH recommended that the Commission require a PET data field indicating if a swap is cleared following an agency or principal model.[234] ISDA recommended combining the "Clearing indicator" and "Origin (house or customer)" fields into a single "Cleared" field with four possible values—not cleared, intended to be cleared, cleared (principal), and cleared (agency).[235] ISDA commented that the current reporting system results in DCOs reporting principal cleared trades in a manner designed for agency clearing model. ISDA commented that this is at odds with European Union requirements and may result in data reported to multiple jurisdictions that is not reconcilable.[236] Eurex commented that, in the principal model, the DCO may not know the identity of the clearing member's client; if the DCO is required to report that client's identity, it would be necessary for anyone trading part 45 reportable swaps to possess an LEI.[237]

LCH commented that the "Original swap USI," "Original swap SDR," and "Clearing member client account" PET fields for clearing swaps should only be required "if applicable."[238]

ii. Comments on Specific Proposed PET Fields[239]

ISDA supported the proposed modification of the clearing venue and execution venue PET fields to require the submission of an LEI for such venues.[240] ISDA also supported the addition of the "Asset class" PET data field for all swaps.[241] ISDA also commented on the removal of internal counterparty identifiers as a valid submission for various counterparty identification fields, noting that not all global regulators require swap counterparties to obtain LEIs.[242] ISDA requested that the Commission continue to work with global regulators to ensure uniform adoption of the LEI standard across jurisdictions.

ISDA commented that the PET field for "Block trade indicator" should be removed rather than amended because block trade status only affects part 43 reporting.[243] ISDA questioned the value that block trade status would provide the Commission when evaluating swap data.[244] Further, block trade status may change over the life of a swap and there is no guidance in part 43 or part 45 on how to deal with such changes.[245]

Finally, ISDA commented on the proposed "Clearing exception or exemption type" PET field, which would require the reporting party to identify the clearing exception or exemption exercised for a particular swap.[246] ISDA commented that it could be challenging and costly for firms to implement this change, while providing duplicative information because exemption elections must already be provided to SDRs.[247] ISDA recommended that the "Clearing exception or exemption type" PET field acceptable values be limited to "inter-affiliate" and "other," because inter-affiliate trades can be identified under existing reporting standards.

4. Final Rule Text

Having considered the comments provided in response to the NPRM, the Commission is adopting the revisions to Appendix 1 of part 45 as proposed.[248] In response to the IDWG Request for Comment, some commenters argued that the Commission should not require additional data fields for reporting and should reduce the number of fields currently required.[249] The Commission explained in the NPRM that the proposed modifications to existing PET data fields will add clarity to the current reporting requirements. In regards to the additional fields, the NPRM explained that the new fields will require the reporting of information that is essential to the efficient operation of reporting of the swaps involved in a cleared swap transaction.[250]

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[229] *See also* §§ 45.10(a)(1), (b)(1)(iii), (b)(2)(ii), (c)(1)(iii), (c)(2)(ii), and (c)(3) (requiring entities with reporting obligations to transmit to the DCO for swaps submitted for clearing "the identity of the swap data repository to which required swap creation data is reported" and the USI for the swap).

[230] *Id.*

[231] *See* Eurex Oct. 30, 2015 Letter, at 8.

[232] *See* JBA Oct. 30, 2015 Letter, at 2–3.

[233] *See* JBA Oct. 30, 2015 Letter, at 3.

[234] *See* LCH Oct. 30, 2015 Letter, at 4.

[235] *See* ISDA Oct. 30, 2015 Letter, at 9–10.

[236] *See* ISDA Oct. 30, 2015 Letter, at 11.

[237] *See* Eurex Oct. 30, 2015 Letter, at 8.

[238] *See* LCH Oct. 30, 2015 Letter, at 4.

[239] DTCC also commented on the proposed PET field for "Clearing swap USIs," "Original swap USIs," and "Original swap SDRs." *See* DTCC Oct. 30, 2015 Letter, at 8–9. These comments are addressed in the discussions on proposed revisions to §§ 45.5 and 45.8, *supra* Sections II.D and II.E.

[240] *See* ISDA Oct. 30, 2015 Letter, at 8.

[241] *See id.* at 9.

[242] *See* id., at 8.

[243] *See id.* at 8.

[244] *See id.* at 8.

[245] *See id.* at 8.

[246] *See id.* at 9.

[247] *See id.* at 9.

[248] The Commission has also noted ITV's comment requesting the addition of an indicator that a swap was part of a package transaction. *See* ITV Oct. 30, 2015 Letter, at 3. While this comment is beyond the scope of the NPRM, the Commission would note that the Technical Specifications Request for Comment solicits input on this topic.

[249] *See* CMC May 27, 2014 Letter, at 3 (recommending that the Commission reduce the number and complexity of data fields required to improve data reporting); CME letter at 17–19 (providing recommendations on modification for specific data fields and arguing against requiring certain additional reporting); DTCC May 27, 2014 Letter, at 3, appendix at 15 (suggesting that the Commission consider whether requiring fewer data elements would better enable the Commission and other regulators to fulfill their regulatory obligations); International Energy Credit Association May 27, 2014 Letter, at 5–6 (arguing that existing swap data reporting requirements do not need to be expanded and that data reporting would be improved by reducing the current reporting burden); Swiss Re May 27, 2014 Letter, at 5 (describing reporting difficulties for specific data fields).

Regarding the proposed PET fields for clearing swaps, as noted in the NPRM, the Commission believes such data elements would more accurately capture the additional, unique features of clearing swaps that are not relevant to uncleared swaps.[251] The Commission has noted the number of comments addressing the issue of reporting swaps cleared under the principal, as opposed to agency, model of clearing. In particular, the Commission has reviewed ISDA's comment on combining the "Clearing indicator" and "Origin (house or customer)" fields. While the Commission is adopting those fields as proposed, the Commission would note that in the Technical Specifications Request for Comment, the Commission solicited input on a potential data element indicating agency versus principal clearing model, and on reporting package transactions.[252]

The Commission notes LCH's comment that certain PET data elements should only be reported "if applicable." The Commission notes that appendix 1 to part 45 states that reporting parties should "[e]nter N/A for fields that are not applicable," which is repeated in the header to every column in appendix 1. To ensure that reported swap data is complete, the Commission would reiterate that any PET data field that is not applicable to a particular swap should be marked "N/A" and not left blank. Otherwise, the Commission cannot determine if a field is inapplicable or if an applicable data element is missing.

The Commission declines to remove the "Block trade indicator" as requested by ISDA because this indicator is necessary for a proper review of market activity for surveillance and enforcement purposes. The Commission would note that block trade status is most relevant for part 43 real-time reporting purposes. Therefore, in response to ISDA's request for guidance, the Commission would note that a swap's block trade status should be determined as of the time of execution; subsequent changes to notional amounts should not impact whether the swap met the block trade threshold originally.

As for the "Clearing exception or exemption type" PET field, the Commission has noted ISDA's comment that this field may be difficult to implement. However, the Commission believes that additional PET fields indicating clearing exception and exemption type are necessary for the Commission to track compliance with Commission regulation § 50.50. While reporting counterparties are required under existing § 50.50(b) to provide clearing exemption election forms with SDRs, the existing swaps data reporting rules do not require that the reporting counterparty indicate that such clearing exemption was elected for a particular swap. Without such information provided as part of transaction-specific swaps data, the Commission is unable to determine which counterparties are relying on an exemption and how often such elections are being made.[253] This additional PET field will aid the Commission in tracking compliance with the clearing mandate by providing transaction specific information on why certain swaps were uncleared.

The asset class data field will assist the Commission in identifying the asset class for swaps reported to registered SDRs pursuant to part 45. The indication of whether the reporting counterparty is a DCO with respect to the swap data field is consistent with proposed § 45.8(i), which designates the DCO as the reporting counterparty for clearing swaps, and the existing PET data fields that require certain information related to the registration status of the counterparties to be included in PET data reporting.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[254] The rules proposed herein will have a direct effect on SDRs, DCOs, SEFs, DCMs, SDs, MSPs, and non-SD/MSP counterparties who are counterparties to one or more swaps and subject to the Commission's jurisdiction. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[255] The Commission has previously determined that DCMs[256] and DCOs[257] are not small entities for the purpose of the RFA. The Commission has also previously proposed that SDRs, SEFs, SDs, and MSPs should not be considered to be small entities.[258]

The Final Part 45 Rulemaking and preceding proposal discussed how certain non-SD/MSP counterparties could be considered small entities in certain limited situations, but concluded that part 45 does not have a significant impact on a substantial number of small entities.[259] The modifications to part 45 adopted herein do not affect that conclusion, or the reasoning behind it, and therefore the Commission does not believe that these adopted rules will have a significant economic impact on a substantial number of small entities. To the extent that this rulemaking has any significant impact on small entities, it removes some reporting obligations by explicitly putting the obligation to terminate original swaps on DCOs accepting those swaps.

Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the adopted rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* ("PRA") are, among other things, to minimize the paperwork burden to the private sector, to ensure that any collection of information by a government agency is put to the greatest possible uses, and to minimize duplicative information collections across the government.[260] The PRA applies to all information, regardless of form or format, whenever the government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.[261] The

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[250] *See* 80 FR 52544, 52559.

[251] *See* 80 FR 52544, 52559.

[252] *See* Draft Technical Specifications for Certain Swap Data Elements, Request for Comment (Dec. 22, 2015), available at *http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf.* ("Technical Specifications Request for Comment").

[253] As noted above, in addition to the end-user exception to the swap clearing requirement set forth in section 2(h)(7) of the CEA and codified in part 50 of the Commission's regulations, the Commission has published two exemptions to the swap clearing requirement: The inter-affiliate exemption (§ 50.52) and the financial cooperative exemption (§ 50.51).

[254] *See* 5 U.S.C. 601 *et seq.*

[255] 47 FR 18618, 18618–21, Apr. 30, 1982.

[256] *Id.*

[257] 66 FR 45604, 45609, Aug. 29, 2001.

[258] Swap Data Recordkeeping and Reporting, Notice of Proposed Rulemaking, ("Part 45 NPRM") 75 FR 76574, 76595 (Dec. 8, 2010) (discussing why SDRs, SEFs, SDs, and MSPs should not be considered small entities).

[259] Final Part 45 Rulemaking, 77 FR 2136, 2170–71 (discussion for non-SD/MSP counterparties); Part 45 NPRM, 75 FR 76574, 76595 (discussion for non-SD/MSP counterparties).

[260] *See* 44 U.S.C. 3501.

[261] *See* 44 U.S.C. 3502.

PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[262] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget ("OMB"). The OMB control number for the information collection associated with part 45 swaps reporting is 3038–0096.[263] Because reporting entities under part 45 would also be required to report swaps pursuant to part 43, where applicable, some of the burden associated with swaps reporting under part 45 is covered in the information collection covering real-time swaps reporting pursuant to part 43.[264]

The Commission intends to amend existing collection 3038–0096 to account for adjustments to reporting entities' swaps data reporting systems necessitated by this release. Information collection 3038–0096 [265] includes an estimate of burden hours and costs associated with various requirements of part 45 swaps reporting and recordkeeping,[266] including the reporting of creation data under § 45.3 and continuation data under § 45.4,[267] the maintenance of an internal order management system ("OMS"), and personnel needed to maintain a compliance program in support of an OMS system. The intended amendment to the collection will add an estimate for the burden associated (a) with changing reporting systems to comply with changes to the required data to be reported under § 45.3 and § 45.4, and (b) with requirements that DCOs potentially connect to all registered SDRs. The Commission will be filing to update this information collection with OMB prior to the effective date of this release. This update will be publicly noticed and made available for comment in the **Federal Register**.

The Commission received several comments on the costs associated with part 45 swaps reporting that could implicate PRA burdens.[268] Regarding the addition of PET fields applicable to all swaps, ISDA commented that the PET field for "clearing exception or exemption type" would be "very challenging and costly" to implement.[269] However, neither ISDA nor any other commenter provided information quantifying the cost to update reporting systems to account for the modified and additional PET fields. As discussed more extensively in Section III.C.9, the information required to be reported in the modified "clearing exception or exemption type" is also already in the possession of the reporting entity; changes to reporting systems required to report this field would involve adding a known piece of information to the message reported to an SDR. Regarding new PET fields for clearing swaps, Eurex commented that DCOs would need to collect data from the original swap counterparties or trading venue to be able to report these fields.[270] The information required to report these PET fields is either generated by the DCO itself (such as clearing swap USI, clearing member LEI, clearing member internal identifier, house/customer account flag, and receipt and clearing timestamps) or should be included in the clearing member's submission of a swap to the DCO for clearing (such as the original swap USI and original swap SDR). While the Commission believes that reporting entities already possess information required to report the added and amended PET fields, the Commission intends to amend collection 3038–0096 to account for changes that reporting entities must make to their reporting systems to comply with these new and amended fields.

Some commenters raised concerns that requiring DCOs to report continuation data for original swaps to the SDR to which the original swap was reported could increase costs for DCOs as they may need to connect to SDRs to which they do not currently have a connection.[271] The Commission understands that DCOs already may report terminations to the original SDR, and to the extent these reporting systems are already implemented the new rules will not introduce additional costs for these DCOs. Moreover, the costs of additional SDR connections that may not yet be in place are addressed by the Commission more fully below at III.C.5. However, the Commission recognizes that requiring DCOs to potentially connect to more than one SDR in order to report continuation data for original swaps may require an update to the existing information collection 3038–0096. The Commission will be filing to update this information collection with OMB prior to the effective date of this release. This update will be publicly noticed and made available for comment in the **Federal Register**.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[272] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

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[262] *See* 5 CFR 1320.3(c)(1).

[263] The NPRM improperly cited information collection 3038–0089, rather than 3038–0096, as the collection relating to swaps reporting under part 45. However, the NPRM's discussion of what information is collected and the burden estimates for swaps reporting under part 45 correctly described collection 3038–0096, which is the basis of this PRA discussion.

[264] *See* Information Collection 3038–0070; *see also* 77 FR 2136, 2174. ("The Commission notes, however, that these burdens should not be considered additional to the costs of compliance with part 43, because the basic data reporting technology, processes, and personnel hours and expertise needed to fulfill the requirements of part 43 encompass both the data stream necessary for real-time public reporting and the creation data stream necessary for regulatory reporting.").

[265] The Commission issued a notice of intent to renew information collection 3038–0096 on August 7, 2015. *See* Notice of Intent to Renew Collection 3038–0096, 80 FR 47477 (Aug. 7, 2015). The Commission received no comments on this notice of intent to renew. The comment file is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1608*. The Office of Management and Budget approved without change the renewal of this information collection on December 21, 2015.

[266] Supporting documentation for the renewal of information collection 3038–0096 is available at *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201508-3038-002*.

[267] "Creation data" under § 45.3 includes all PET data fields listed in appendix 1 to part 45, as well as all "confirmation data," which includes all terms of the swap matched and agreed upon by the parties. "Continuation data" reporting under § 45.4 requires a reporting entity to ensure that all data on a swap is kept current and accurate, including any changes to primary economic terms.

[268] In addition, FSR requested that the Commission promulgate rules to standardize data elements. *See* FSR Oct. 30, 2015 Letter, at 4. While this comment would relate to the burden of reporting for part 45 purposes, it is beyond the scope of the NPRM. The Commission would note Commission staff's efforts in connection with the Technical Specifications Request for Comment, discussed in n. 42. The Commission also received some comments suggesting that the Commission not require the reporting of intended-to-be-cleared original swaps, or require DCOs to report such swaps. *See, e.g.*, CEWG Oct. 30, 2015 Letter, at 2–3; CMC Oct. 30, 2015 Letter, at 2. While not requiring such reporting would reduce the burden on original swap reporting entities, the NPRM and adopted amendments to part 45 do not change the existing requirement to report such swaps. Therefore, this comment is beyond the scope of the NPRM. *See, supra*, Section II.B.4.iii.

[269] ISDA Oct. 30, 2015 Letter, at 9.

[270] *See* Eurex Oct. 30, 2015 Letter, at 5.

[271] *See e.g.*, Eurex Oct. 30, 2015 Letter, at 5, 9; LedgerX Oct. 30, 2015 Letter, at 2; LCH Oct. 30, 2015 Letter, at 3. The Commission notes that another commenter stated that "DCOs have already made connections with the major CFTC-registered SDRs." (DTCC Oct. 30, 2015, Letter at 5).

[272] 7 U.S.C. 19(a).

The Commission is amending and making additions to §§ 45.1, 45.3, 45.4, 45.5, 45.8, 45.10, and appendix 1 to part 45 in order to provide clarity to counterparties to a swap and registered entities regarding their part 45 reporting obligations with respect to cleared swap transactions and to improve the efficiency of data collection and maintenance associated with the reporting of the swaps involved in a cleared swap transaction. The final rule adopts revisions to part 45 as proposed in the NPRM.

2. Background

The swap data reporting framework adopted in the Final Part 45 Rulemaking[273] was largely based on the mechanisms for the trading and execution of uncleared swaps. The plain language of the existing part 45 rules presumes the existence of a single, continuous swap both prior to and after acceptance of a swap for clearing by a DCO. Under that framework, registered entities and counterparties would each report data with respect to a single swap when such swap is initially executed, referred to as "creation data," and over the course of the swap's existence, referred to as "continuation data."[274]

The Commission has since had additional opportunities to consult with industry and with other regulators, including the SEC,[275] and to observe how the part 45 regulations function in practice with respect to swaps that are cleared, including how the implementation of part 45 interacts with the implementation of part 39 of the Commission's regulations, which contains provisions applicable to DCOs.

In particular, § 39.12(b)(6) provides that upon acceptance of a swap by a DCO for clearing, the original swap is extinguished and replaced by equal and opposite swaps, with the DCO as the counterparty to each such swap.[276] The original swap that is extinguished upon acceptance for clearing is commonly referred to as the "alpha" swap and the equal and opposite swaps that replace the original swap are commonly referred to as "beta" and "gamma" swaps. The Commission is of the view that the existing part 45 regulations should be amended to better accommodate the multi-swap framework of § 39.12(b)(6) by explicitly addressing beta and gamma swaps as distinct swaps for purposes of part 45 reporting.[277]

The existing part 45 regulations do not explicitly address the reporting of "alpha," "beta," and "gamma" swaps; however, industry practice has evolved to address such reporting. The Commission understands that market participants generally report part 45 data for cleared swap transactions in conformance with the framework described in § 39.12(b)(6), where separate swaps (alphas, betas, and gammas) are represented individually in reported swap data. The Commission understands that under existing market practice: SEFs, DCMs and reporting counterparties generally report required swap creation data for alpha swaps to the SDR of their choice; DCOs that accept alpha swaps for clearing generally report required swap creation data for the beta and gamma swaps that result from clearing novation of the alpha swap to the SDR of their choice (which may be different than the SDR to which the alpha swap was reported); such DCOs do not in all cases include the USI of the alpha swap in creation data reported for the beta and gamma swaps; and that DCOs may inconsistently report, and SDRs may inconsistently accept and process, alpha swap terminations.[278]

The gaps between the existing part 45 regulations, § 39.12(b)(6), and certain industry practices, including those outlined above, have likely contributed to a lack of certainty regarding the applicability of the part 45 regulations to beta and gamma swaps, including which registered entity or counterparty is required to report creation data and/or continuation data for such swaps, and the manner in which such swaps must be reported. The Commission understands that this uncertainty presents compliance challenges for registered entities and reporting counterparties.

Additionally, the lack of clarity regarding existing part 45 obligations with respect to beta and gamma swaps has impacted the accuracy, quality, and usefulness of data that is reported for cleared swaps. For instance, inconsistent DCO reporting of alpha swap USIs in creation data for beta and gamma swaps hinders the Commission's ability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing novation. Even in cases where the Commission can ascertain the USI of a specific alpha swap that was replaced by beta and gamma swaps, SDR data available to the Commission at times misleadingly shows some alpha swaps as remaining open between the original counterparties, when in actuality such swaps have been extinguished through clearing novation. The inability to determine whether an alpha swap has been terminated impedes the Commission's ability to analyze cleared swap activity and to review swap activity for compliance with the clearing requirement.[279] If alpha swaps have been terminated, yet appear to remain open, then a risk of double counting swap notional exposures can result, which would impede the Commission's ability to analyze and study swaps market activity using accurate information. The inability to link the different swaps in a cleared swap transaction also impedes the Commission's ability to assess exposures of market participants in the uncleared and cleared swaps markets. Additionally, certain creation data fields that are currently populated for beta and gamma swaps prove difficult to interpret by the Commission, and thus can result in inconsistencies in their application and reporting among alpha, beta, and gamma swaps, hindering the Commission's ability to interpret and analyze data regarding beta and gamma swaps.

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[273] *See* 77 FR 2136.

[274] Section 45.1 defines "required swap creation data" as primary economic terms data and confirmation data. Section 45.1 defines "primary economic terms data" as all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question and defines "confirmation data" as all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. 17 CFR 45.1. For cleared swaps, confirmation data also includes the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house. *Id.*

[275] The SEC proposed certain new rules and rule amendments to Regulation SBSR governing reporting in the context of security-based swaps. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015).

[276] *See* 17 CFR 39.12(b)(6) (requiring a DCO that clears swaps to have rules providing that, upon acceptance of a swap by the [DCO] for clearing: (i) The original swap is extinguished; (ii) the original swap is replaced by an equal and opposite swap between the [DCO] and each clearing member acting as principal for a house trading or acting as agent for a customer trade). Subsequent to adoption of the Final Part 45 Rulemaking, the Commission affirmed that the multi-swap framework (comprising separate and unique original and resulting swaps) should apply for part 45 reporting purposes. *See* Statement of the Commission on the Approval of Chicago Mercantile Exchange Rule 1001 (Mar. 6, 2013), at 6, available at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf.*

[277] The Commission also notes that a single swap reporting framework for cleared swaps, as opposed to a multi-swap framework like the one contemplated by § 39.12(b)(6), would likely not be consistent with the approach proposed by the SEC in its release proposing certain new rules and rule amendments to Regulation SBSR. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015). The Commission discusses the benefits associated with harmonizing its approach with that of other regulators later in this release.

[278] While the above reflects the Commission's general understanding of industry practice with respect to the reporting of component parts of a cleared swap transaction, the Commission does not possess complete information regarding certain details and nuances of the reporting practices of different registered entities and reporting counterparties. For instance, in some cases, the Commission generally does not possess sufficient information to ascertain the period of time between the DCO's acceptance of an alpha swap for clearing and the DCO's report of creation data for beta and gamma swaps. The Commission posed questions eliciting specific details or nuances of industry practice that are likely to have cost/benefit implications in the relevant sections of the NPRM.

The revisions and additions that are being adopted in this final rulemaking would amend part 45 to differentiate reporting requirements for cleared and uncleared swap transactions, and which explicitly address swap counterparty and registered entity reporting requirements for each component (*e.g.*, alpha, beta, and gamma) of a cleared swap transaction. This rulemaking will remove uncertainty as to which counterparty to a swap is responsible for reporting creation data for each of the various components of a cleared swap transaction. The final rule makes clear whose obligation it is to report the termination of the original swap upon acceptance of a swap by a DCO for clearing. These additional details include where, when, and how to report the swap data pertaining to the establishment of the beta and gamma swaps and the reporting of the termination message to the SDR that originally received the swap data for the alpha swap. This final rule is also intended to improve the efficiency of data collection and maintenance associated with the reporting of the swaps involved in a cleared swap transaction and to improve the accuracy, quality, and usefulness of data that is reported for cleared swaps and alpha swaps that have been extinguished due to clearing novation.

The Commission believes that the baseline for this consideration of costs and benefits is generally the existing part 45 regulations, which were adopted in 2011.[280] However, as described above, in certain circumstances, industry practice has been informed by certain provisions of part 39 and by subsequent industry developments, and thus does not necessarily reflect the plain language of the existing part 45 regulations. In those circumstances, the baseline for this consideration of costs and benefits will be industry practice.

The following consideration of costs and benefits is organized according to the rules and rule amendments put forth in this final rulemaking. For each rule, the Commission summarizes the amendments[281] and identifies and discusses the costs and benefits attributable to them, including a discussion of the commenters' suggestions with regards to the costs and benefits of the amendments present in the IDWG Request for Comment and the NPRM.[282] The Commission then considers the costs and benefits of certain alternatives to the rules put forth in this final rulemaking, as well as the costs and benefits of all of the rules jointly in light of the five public interest considerations set out in section 15(a) of the CEA.

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally, with many transactions involving U.S. firms taking place across international boundaries, with some Commission registrants being organized outside of the United States, with leading industry members typically conducting operations both within and outside the United States, and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the proposed rules on all swaps activity subject to the amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).[283] The Commission also notes that the existing part 45 regulations generally contemplate situations where a swap may be required to be reported pursuant to U.S. law and the law of another jurisdiction.[284]

3. Definitions—Amendments to § 45.1

The adopted amendments to § 45.1 revise the definition of "derivatives clearing organization" for purposes of part 45 to update a reference to an existing definition of "derivatives clearing organization" and make clear that part 45 applies to DCOs registered with the Commission. The adopted amendments to § 45.1 will also add new definitions for "original swaps" (swaps that have been accepted for clearing by a DCO, commonly referred to as "alpha" swaps) and "clearing swaps" (swaps created pursuant to the rules of a DCO that have a DCO as a counterparty, including, but not limited to, any swap that replaces an original swap that was extinguished upon acceptance for clearing, commonly referred to as "beta" and "gamma" swaps).

The terms original swap and clearing swaps will be used throughout amended part 45 to help clarify reporting obligations for each swap involved in a cleared swap transaction. Likewise, the Commission will use the defined terms "original swaps" and "clearing swaps" throughout this consideration of costs and benefits. Given that these terms are a product of this release and are not yet part of industry nomenclature, the Commission will also use the terms "alpha, beta, and gamma" throughout this consideration of costs and benefits when discussing existing industry practice and when helpful for purposes of clarification.[285]

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[279] Commission staff recently noted difficulty in evaluating the proper *de minimis* level of activity for swap dealer registration under Commission regulation 1.3(ggg), in part due to difficulties linking alpha swaps with resulting beta and gamma swaps. *See* Swap Dealer *De Minimis* Exception Preliminary Report (Nov. 18, 2015), at 13–14, available at *http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf*. In the report, Staff noted that the finalization and implementation of this final rule release for reporting of cleared swaps should help to mitigate this issue going forward.

[280] *See* Swap Data Recordkeeping and Reporting Requirements, Final Rule, 77 FR 2136 (Jan. 13, 2012).

[281] As described in detail throughout Section II of this final release, the Commission is also adopting a number of non-substantive, conforming rule amendments in this release, such as renumbering certain provisions and modifying the wording of existing provisions to ensure consistency with the wording in newly proposed definitions. Non-substantive amendments of this nature will not be discussed in the cost-benefit portion of this final release.

[282] *See* IDWG Request for Comment, 79 FR 16689 (Mar. 26, 2014); NPRM, 80 FR 52544, 52570 (Aug. 31, 2015).

[283] 7 U.S.C. 2(i). Section 2(i)(1) makes the swaps provisions of the Dodd-Frank Act, and Commission regulations promulgated under those provisions, applicable to activities outside the United States that "have a direct and significant connection activities in, or effect on, commerce of the United States;" while section 2(i)(2) makes them applicable to activities outside the United States that contravene Commission rules promulgated to prevent evasion of Dodd-Frank. Application of section 2(i)(1) to the existing part 45 regulations with respect to SDs/MSPs and non-SD/non-MSP counterparties is discussed in the Commission's non-binding Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

[284] *See* 17 CFR 45.1 (defining "International swap" to mean a swap required by U.S. law and the law of another jurisdiction to be reported both to a swap data repository and to a different trade repository registered with the other jurisdiction.); *see also* 17 CFR 45.3(h) (prescribing requirements with respect to international swaps).

The Commission notes that commenters did not submit any comments relevant to the costs and benefits of the proposed amendments to § 45.1.

i. Costs

The Commission does not anticipate that these definitions, in and of themselves, impose additional costs on DCOs or market participants. However, these definitions will be referenced in other proposed substantive provisions and the costs and benefits of those substantive requirements will be discussed in the relevant sections below.

ii. Benefits

As discussed earlier in this release, the plain language of the existing part 45 regulations presumes the existence of one continuous swap and does not explicitly acknowledge distinct reporting requirements for the individual components (*i.e.*, alphas, betas, and gammas) of a cleared swap transaction. However, industry practice is generally to report part 45 data for cleared swap transactions in conformance with the multi-swap framework described in § 39.12(b)(6) (*i.e.*, to report alphas, betas, and gammas separately). The definitions of original and clearing swaps, along with the other revisions to part 45 covered in this release, will help align the part 45 regulations with part 39 and with certain industry practices and will explicitly delineate the swap data reporting obligations associated with each of the swaps involved in a cleared swap transaction.[286]

4. Creation Data Reporting by DCOs—Amendments to § 45.3

Existing § 45.3 requires reporting to an SDR of two types of "creation data" generated in connection with a swap's creation: "primary economic terms data" and "confirmation data." [287] Regulation 45.3 governs what creation data must be reported, who must report it, and deadlines for its reporting.

Amended § 45.3(e) will govern creation data reporting requirements for swaps that fall under the proposed definition of clearing swaps. Amended § 45.3(e) will also require a DCO, as reporting counterparty under adopted § 45.8(i),[288] to report all required swap creation data for each clearing swap as soon as technologically practicable after acceptance of an original swap by a DCO for clearing (in the event that the clearing swap replaces an original swap) or as soon as technologically practicable after execution of the clearing swap (in the event that the clearing swap does not replace an original swap).[289]

Swaps other than clearing swaps, including swaps that later become original swaps by virtue of their acceptance for clearing by a DCO, will continue to be reported as currently required under existing § 45.3(a)–(d). The Commission is thus following an approach to creation data reporting that will require reporting counterparties or SEFs/DCMs to report creation data for swaps commonly known as alpha swaps, and that will require DCOs to report creation data for swaps commonly known as beta and gamma swaps, and for any other swaps to which the DCO is a counterparty.[290]

With respect to confirmation data reporting, for swaps that are intended to be cleared at the time of execution, the Commission is amending § 45.3(a), (b), (c)(1)(iii), (c)(2)(iii), and (d)(2) to remove certain existing confirmation data reporting requirements. Under the modified rules, SEFs/DCMs and reporting counterparties will continue to be required to report PET data as part of their creation data reporting, but will not be required to report confirmation data for swaps that are intended to be submitted to a DCO for clearing at the time of execution. Instead, the DCO will be required to report confirmation data for clearing swaps pursuant to proposed § 45.3(e).

The Commission is also amending § 45.3(j), which will provide that: for swaps executed on or pursuant to the rules of a SEF or DCM (including swaps that become original swaps), the SEF or DCM will have the obligation to choose the SDR for such swaps; for all other swaps (including for off-facility swaps and/or clearing swaps) the reporting counterparty (as determined under § 45.8) will have the obligation to choose the SDR.

The Commission has considered the letters sent by commenters to the cost-benefit considerations of proposed amendments to § 45.3. Several comments were received on the elimination of the requirement for reporting confirmation data for swaps that are intended to be cleared. On the cost-benefit considerations front, Markit commented that eliminating the requirement for reporting confirmation data for swaps that are intended to be cleared, while still maintaining the requirement to report primary economic terms data, will not benefit reporting workflows and that there is little incremental cost to report confirmation data as reporting systems are set-up to capture that information already.[291]

With regards to eliminating the requirement for reporting confirmation data, the Commission acknowledges that there might be incremental cost savings due to the elimination of this requirement, as suggested by commenters. Nevertheless, the Commission believes that there is no cost associated with the elimination of this requirement and that confirmation data requirements for clearing swaps provide the Commission with a sufficient representation of the confirmation data for a cleared swap transaction. As a result, the Commission believes that there are benefits in the form of cost savings that need to be considered in the elimination of this requirement.

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[285] The Commission determined to utilize the proposed to be defined terms "original swap" and "clearing swaps" in this release rather than the industry terms "alpha, beta, and gamma" because while a cleared-swap transaction generally comprises an original swap that is terminated upon novation and the equal and opposite swaps that replace it, the Commission is aware of certain circumstances in which a clearing swap may not involve the replacement of an original swap (*e.g.*, an open offer swap, as discussed earlier in this release). *See supra*, Section II.A.

[286] The Commission acknowledges that the alternative approaches to the reporting of cleared swap transactions separately discussed in Section III.C.10, Consideration of Alternatives, later in this release could also provide these benefits for registered entities and swap counterparties. However, for the reasons explained in that section, the Commission is of the view that the proposed approach is more consistent with industry practice than the alternatives.

[287] Section 45.1 defines "required swap creation data" as primary economic terms data and confirmation data. Section 45.1 defines "primary economic terms data" as all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question and defines "confirmation data" as all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. 17 CFR 45.1. For cleared swaps, confirmation data also includes the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house." *Id.*

[288] As discussed in greater detail below, adopted § 45.8(i) will designate the DCO as the reporting counterparty for clearing swaps.

[289] As noted earlier in this release, the amended definition of "clearing swap" is intended to encompass: (1) Swaps that replace an original swap and to which the DCO is a counterparty (*i.e.*, swaps commonly known as betas and gammas) and (2) all other swaps to which the DCO is a counterparty (even if such swap does not replace an original swap). The Commission understands that there may be instances in which a clearing swap does not replace an original swap. For example, in the preamble to the part 39 adopting release, the Commission noted that "open offer" systems are acceptable under § 39.12(b)(6), stating that "Effectively, under an open offer system there is no 'original' swap between executing parties that needs to be novated; the swap that is created upon execution is between the DCO and the clearing member, acting either as principal or agent."). *See* Derivatives Clearing Organization General Provisions and Core Principles, Final Rule 76 FR 69334, 69361 (Nov. 8, 2011).

[290] Because the reporting counterparty or SEF/DCM are currently required under Part 45 to report a swap that would become an original swap under this final release, there is no need to conduct a cost-benefit consideration of this requirement. Alternatives to the current reporting approach for original swaps are discussed in the Consideration of Alternatives section, Section III.C.10, below.

[291] *See* Markit Oct. 30, 2015 Letter, at 2–3.

Other commenters responded to the question of which entity should be responsible for reporting creation data for swaps that will become original swaps. Commenters were split on this question. Some commenters suggested that the DCO, rather than the reporting counterparty, should be responsible for reporting the creation data for that swap.[292] CME commented that assigning all the reporting obligations for original and clearing swaps to the DCO is a better and simpler way to address alpha swap reporting, and will eliminate the need to reconcile original and clearing swaps across SDRs.[293] CMC similarly commented that DCOs are in the best position to report on swaps that are accepted or rejected for clearing and should assume all reporting obligations for cleared swaps, including all reporting of swaps that are intended to be cleared.[294] AIMA likewise suggested that if the Commission continues the reporting requirements associated with original swaps, assigning the reporting obligations to the DCOs will remove reporting burdens and the risk of data fragmentation across SDRs.[295]

Other commenters recommended that the Commission continue to require the reporting counterparty to report creation data for those swaps that will become original swaps.[296] LCH commented that the reporting counterparty of a trade should always be a party to the transaction and therefore, in the case of a swap that will become an original swap, the DCO would not be better suited than the SEF, DCM, or reporting counterparty to report the creation data.[297] Eurex suggested that assigning the reporting obligation of original swap creation data to the DCO may present a timeliness issue depending on when the DCO receives the necessary information from the counterparties.[298] ISDA likewise agreed that the obligation to report swaps that become original swaps should remain with the reporting counterparty for that swap.[299]

Furthermore, certain commenters suggested that the reporting of any creation data for swaps that will become original swaps is unnecessary.[300] AIMA commented that eliminating reporting for swaps that are intended to be cleared at the time of execution will significantly reduce complexity in the reporting regime and streamline the reported data.[301] AIMA also commented that the proposed reporting approach for original swaps will not reduce data fragmentation.[302] Similarly, EEI/EPSA suggested that there is little to no benefit to original swap reporting for swaps that are intended to be cleared at the time of execution and that counterparties should not be required to report any creation data for such swaps.[303]

While the NPRM did not propose changing the existing obligation to report swaps that become original swaps, and is therefore beyond the scope of the NPRM, the Commission continues to believe that original swaps contain essential information regarding the origins of cleared swap transactions for market surveillance and audit-trail purposes. The Commission's ability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing novation relies on this information and this is a significant benefit to the Commission in terms of understanding the market structure as well as for surveillance purposes.

With respect to the issue of who reports creation data for those swaps that will become original swaps, the Commission believes that the requirement that the reporting counterparty report creation data for those swaps that will become original swaps should remain. The Commission believes there are significant benefits associated with maintaining established industry workflows. Reporting counterparties and registered entities have invested substantial time and resources to report swaps (both cleared and not cleared) to SDRs, and DCOs have invested substantial resources to report clearing swaps. The Commission believes it would be efficient to make use of this existing infrastructure and asking market participants to make changes to this established workflow might be costly. The Commission acknowledges the data fragmentation concerns raised by those that recommend DCOs report original swap creation data. However, the Commission also recognizes that requiring the DCOs, rather than the original reporting counterparty, to report original swap creation data may present challenges of its own.[304] The Commission also believes that there are significant benefits associated with maintaining accurate and timely reporting of the required data fields and that this will outweigh data fragmentation concerns for those situations where the original swap and clearing swaps are reported to different SDRs.

The Commission has considered arguments made by the commenters with respect to choice of SDR and believes that placing the obligation to choose the SDR on the registered entity or counterparty that is required to report the swap, rather than on another entity, will result in more efficient data reporting. Allowing the first entity to report data on a swap to choose the SDR will allow reporting entities to select an SDR to which they have established connections; giving another entity the ability to choose the SDR could require the first reporting entities to connect to multiple SDRs. The Commission also believes allowing the first reporting registered entity or counterparty to choose the SDR will also promote competition among SDRs to provide SDR services to a broad array of reporting entities.

This method of SDR selection also avoids the insertion of any entity other than a party to the swap or facility where the transaction is executed, into the decision as to how a registered entity or counterparty fulfills its regulatory obligation to report initial required swap creation data. As with the "first-touch" approach taken with respect to the creation of USIs in part 45,[305] the Commission believes that the entity with the first reporting obligation should select the SDR for that report. The Commission believes that such a method of SDR selection will avoid delays in real-time reporting for part 43 purposes. If DCOs were to select the SDR for an original swap, the DCO would not be in a position to make such selection until after a swap was accepted for clearing. Any delays in clearing would translate into delays in reporting for both part 43 real-time reporting and part 45 reporting. Additionally, the registered entity or counterparty that is required to report a swap pursuant to § 45.8 may select an SDR to which its technological systems are most suited or to which it already has an established relationship, providing for the efficient and accurate reporting of swap data. As a result, the Commission believes that amendments to § 45.3(j) simply codify existing practice and will not impose any additional connection costs for DCOs or SDRs. In addition, the Commission believes that allowing DCOs to choose the SDRs to which they report creation and continuation data is cost-minimizing for DCOs because it allows them to select the SDR which is most cost effective.

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[292] *See e.g.*, CME Oct. 30, 2015 Letter, at 2–3; CMC Oct. 30, 2015 Letter, at 2–3; AIMA Oct. 30, 2015 Letter, at 6; CEWG Oct. 30, 2015 Letter, at 3.

[293] *See* CME Oct. 30, 2015 Letter, at 3.

[294] *See* CMC Oct. 30, 2015 Letter, at 2.

[295] *See* AIMA Oct. 30, 2015 Letter, at 6.

[296] *See* ISDA Oct. 30, 2015 Letter, at 4; LCH Oct. 30, 2015 Letter, at 2; Eurex Oct. 30, 2015 Letter, at 4.

[297] *See* LCH Oct. 30, 2015 Letter, at 2.

[298] *See* Eurex Oct. 30, 2015 Letter, at 4.

[299] ISDA also commented in support of the Commission's proposal to remove the provisions in § 45.3 that excused a reporting counterparty from reporting creation data for a swap accepted for clearing before the primary economic terms reporting deadline. *See* ISDA Oct. 30, 2015 Letter, at 4.

[300] *See* AIMA Oct. 30, 2015 Letter, at 2–6; EEI/EPSA Oct. 30, 2015 Letter, at 3; CEWG Oct. 30, 2015 Letter, at 2.

[301] *See* AIMA Oct. 30, 2015 Letter, at 3.

[302] *See* AIMA Oct. 30, 2015 Letter, at 4 (noting that reporting original swap creation data to one SDR and reporting clearing swap data to a different SDR may undermine data quality for the Commission's supervisory purposes).

[303] *See* EEI/EPSA Oct. 30, 2015 Letter, at 3.

[304] *See e.g.*, Eurex Oct. 30, 2015 Letter, at 4 (suggesting there could be timeliness issue depending on when the DCO receives necessary information from counterparties to report creation data).

[305] *See* Final Part 45 Rulemaking, 77 FR 2136, 2158 (Jan. 13, 2012).

i. Costs

The Commission understands that under current industry practice, DCOs commonly report to SDRs creation data for swaps that would fall under the definition of clearing swaps. Accordingly, to the extent that DCOs already have been reporting in conformance with adopted § 45.3(e), the Commission does not expect the final rule to result in any additional costs.

With respect to registered DCOs organized outside of the United States, its territories, and possessions, that are subject to supervision and regulation in a foreign jurisdiction, a home country trade reporting regulatory regime may require the DCO to report swap data to a trade repository in the home country jurisdiction. For clearing swaps that a DCO would be required to report both to a registered SDR pursuant to the amendments to part 45, and to a foreign trade repository pursuant to a home country trade reporting regulatory regime, the Commission acknowledged in the NPRM that a DCO could be expected to incur some additional costs in satisfying both its CFTC and home country reporting obligations, relative to a DCO that would only be subject to part 45 reporting requirements. As also indicated in the NPRM, DCOs are not currently required to provide such cost information to the Commission, the Commission lacks access to the information needed to assess the magnitude of the costs relating to compliance with reporting obligations in multiple jurisdictions. In addition, the Commission did not receive any comments on, nor estimates of, the costs relating to compliance with reporting obligations in multiple jurisdictions. In terms of any potential costs, the Commission expects that industry technological innovations may effectively allow for satisfaction of swap data reporting requirements across more than one jurisdiction by means of a single data submission, and that a streamlined reporting process or other technology and operational enhancements could mitigate the cost of satisfying reporting requirements for swaps that may be required to be reported to a foreign trade repository under a home country regulatory regime as well as to a registered SDR pursuant to amendments to part 45.[306] Additionally, the Commission anticipates that adopting an approach to the reporting of cleared swaps in the United States that is, to the extent possible, consistent with the approaches adopted in other jurisdictions may also minimize compliance costs for entities operating in multiple jurisdictions.[307] The Commission also notes that any costs arising from reporting swap data with respect to more than one jurisdiction could already have been realized, to the extent that DCOs located outside the United States are already reporting swap data to a registered SDR in addition to reporting swap data to a trade repository pursuant to a home country regulatory regime.

Finally, with respect to choice of SDR, the Commission believes that amendments to § 45.3(j) will not impose any additional costs because the amendments simply codify existing practice—the Commission understands that the workflows that apply the proposed choice of SDR obligations are already in place.

The Commission believes that allowing DCOs to choose the SDRs to which they report creation and continuation data is cost-minimizing for DCOs because it allows them to select the SDR which is most cost effective. As discussed in greater detail below, the Commission anticipates that DCOs that have affiliated SDRs will continue their current practice of reporting clearing swaps to their affiliated SDRs.[308]

ii. Benefits

Amended § 45.3(e) will explicitly articulate DCO part 45 reporting obligations with respect to clearing swaps (*e.g.*, betas and gammas).[309] As explained above, existing § 45.3 does not explicitly acknowledge distinct reporting requirements for swaps commonly known as alphas, betas, and gammas. The amendments explicitly delineate creation data reporting obligations for each component of a cleared swap transaction, which will improve the Commission's ability to analyze data associated with such transactions.

Requiring DCOs to report required swap creation data for clearing swaps to SDRs in the manner outlined in this release is expected to result in uniform protocols and consistent reporting of the individual components of a cleared swap transaction. The Commission believes that the adopted reporting framework for cleared swaps will result in more consistent reporting of all components of a cleared swap transaction, including linkages between the related swaps, thereby increasing the efficiency of the SDR data collection function and enhancing the Commission's ability to utilize the data for regulatory purposes, including for systemic risk mitigation, market monitoring, and market abuse prevention.

With respect to confirmation data reporting, the Commission anticipates that the removal of certain confirmation data reporting requirements will result in decreased costs for swap counterparties and/or registered entities that are currently gathering and conveying electronically the information necessary to report confirmation data for swaps that are intended to be submitted to a DCO for clearing at the time of execution.[310]

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[306] As noted in the NPRM, the part 45 regulations contemplate situations where a swap may be required to be reported pursuant to U.S. law and the law of another jurisdiction. *See* 80 FR 52544, 52564 n. 136.

[307] The Commission understands that the approach followed in this final release for the reporting of cleared swaps (*e.g.*, requiring separate reporting of alphas, betas, and gammas) is largely consistent with the multi-swap approach adopted by a number of jurisdictions, including, for example, the European Union, Singapore, and Australia.

[308] The Commission acknowledges several commenters at both the IDWG Request for Comment and NPRM stages who commented on the costs to reporting counterparties when reporting original swaps. *See, e.g.*, CME Oct. 30, 2015 Letter, at 6–7; CMC Oct. 30, 2015 Letter, at 2. However, the Commission has noted that the revisions to part 45 adopted in this release do not change the existing obligation of those entities to report original swaps. Therefore, the costs currently incurred by such reporting counterparties are not a factor when considering the costs and benefits of the revisions adopted in this release. The Commission does discuss those costs in the Consideration of Alternatives, below at Section III.C.10.

[309] The Commission acknowledges that the alternatives separately discussed in the Consideration of Alternatives section later in this release could also provide these benefits for registered entities and swap counterparties. However, for the reasons explained in that section, the Commission is of the view that the proposed approach is more consistent with industry practice than the alternatives.

With respect to the adopted rule allowing the removal of certain confirmation data reporting requirements for swaps that are intended to be submitted to a DCO for clearing at the time of execution, the Commission is of the view that the adopted confirmation data reporting requirements for clearing swaps should provide the necessary confirmation data with respect to cleared swap transactions. Given that the adopted rules will require the DCO to report confirmation data for clearing swaps, requiring an additional set of confirmation data reporting for the now-terminated original swap, in addition to PET data, would be duplicative and therefore unnecessary.

Finally, with respect to choice of SDR, under adopted § 45.3(j), the party with the obligation to report the first data for a swap has the discretion to select the SDR of its choice. This can be an SDR with which the party already has a working relationship, an SDR which is, in the registered entity or reporting counterparty's estimation, most cost-effective, or an SDR that provides the best overall service and product. The Commission believes that this flexibility to select SDRs will minimize reporting errors and improve reporting efficiencies by allowing the reporting entity to select an SDR with which it has a connection and reporting systems in place. The Commission also believes this approach will foster competition between SDRs, as reporting entities such as SEFs/DCMs, SDs/MSPs, DCOs, and non-SD/MSPs can select the SDR to which they will report. Further, allowing the reporting entity to select the SDR will reduce costs, as reporting counterparties and registered entities (other than DCOs) should not have to establish a connection to more than one SDR unless they prefer to do so. The Commission understands that § 45.3(j) is consistent with industry practice,[311] and thus that the benefits described above are already being realized.

5. Continuation Data Reporting by DCOs—Adopted Amendments to § 45.4

The Commission's amendments to § 45.4, which governs the reporting of swap continuation data to an SDR during a swap's existence through its final termination or expiration, incorporate the distinction between original swaps and clearing swaps. The Commission is removing § 45.4(b)(2)(ii), which requires a reporting counterparty that is an SD or MSP to report valuation data for cleared swaps daily; instead, the DCO will be the only swap counterparty required to report swap continuation data, including valuation data, for clearing swaps.

Notably, amended § 45.4(c) will require a DCO to report all required continuation data for original swaps, including original swap terminations, to the SDR to which such original swap was reported. Finally, adopted § 45.4(c)(2) will require that continuation data reported by DCOs include the following data fields as life cycle event data or state data for original swaps pursuant to adopted § 45.4(c)(1): (i) The LEI of the SDR to which each clearing swap that replaced a particular original swap was reported by the DCO pursuant to new § 45.3(e); (ii) the USI of the original swap that was replaced by the clearing swaps; and (iii) the USIs for each of the clearing swaps that replace the original swap.

The Commission has considered the costs and benefits raised by commenters on the proposed addition of § 45.4(c) and its requirement that DCOs report continuation data for original swaps, including terminations. The Commission believes that the adopted revisions to § 45.4(c) are broadly in line with existing industry practice, and set out specific obligations that will ensure continuation data is properly reported and reflected in the data that the Commission uses to fulfill its regulatory obligations. The Commission notes that it may be more burdensome for the counterparties to the original swaps, rather than the DCO, to report terminations, as the counterparty would have to receive a message from the DCO confirming that the original swap was accepted for clearing and then translate that message from the DCO into a termination message to the SDR. Particularly, this may be most burdensome to commercial end-users executing swaps on SEFs or DCMs who might otherwise have no reporting obligations and who may not have the infrastructure in place to report as quickly or as efficiently as DCOs.[312] The Commission's proposed rules largely avoid these costs for commercial end-users.

i. Costs

Existing § 45.4(b)(2) requires that both SDs/MSPs and DCOs report daily valuation data for cleared swaps. The removal of § 45.4(b)(2)(ii) will eliminate the existing valuation data reporting requirement for SDs/MSPs, leaving DCOs as the sole entity responsible for daily valuation data reporting. As DCOs are currently required to report valuation data for cleared swaps, they will not bear any additional costs as a result of this proposed amendment.

While DCOs are currently required to report continuation data on "cleared swaps," including terminations, to SDRs under existing § 45.4,[313] the adopted rule clarifies reporting obligations as they relate to swaps that become original swaps. The Commission understands that DCOs frequently assume responsibility to report the termination of swaps that become alpha swaps, but that DCOs do not consistently report such alpha swap terminations or do not report them in the form required by the alpha swap SDR. Some DCOs that do not currently have connectivity to the SDR where the SEF/DCM or original counterparties first reported the swap will incur costs associated with establishing such connectivity. DCOs will also realize costs associated with the termination notice and submissions correcting previously erroneously reported or omitted data. However, DCO reporting of alpha swap terminations has not been uniform and may vary by DCO and SDR. The Commission is aware that, in some instances, DCOs currently report alpha swap terminations to the original SDR that received the original submission of the intended to be cleared swap. To the extent that DCOs have implemented systems to report alpha swap terminations to the original swap SDR, the amended rules thus will not introduce any new costs for those DCOs.

The Commission received three comments concerning the costs and benefits of the proposed amendments to

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[310] *See* CEWG May 27, 2014 Letter, at 4–5 (stating that reporting confirmation data in addition to PET data is highly redundant because confirmation data simply includes all of the PET data matched and agreed to by the counterparties); ISDA May 27, 2014 Letter, at 6–8 (noting that "Confirmation data should not be required for an alpha trade that is intended for clearing at point of execution, whether due to the clearing mandate or bilateral agreement. Confirmation data for alpha swaps is not meaningful since they will be terminated and replaced with cleared swaps simultaneously or shortly after execution for which confirmation data will be reported by the DCO.").

[311] The Commission notes that industry practice with respect to choice of SDR has likely been influenced in part by a variety of factors, including, among others, the Commission's statement regarding CME Rule 1001. *See* Statement of the Commission on the Approval of CME Rule 1001 (Mar. 6, 2013), at 6. The Commission notes that other DCOs have adopted similar rules. *See, e.g.*, ICE Clear Credit Rule 211.

[312] *See, supra,* n. 26, discussing reporting obligations for end-users trading on-facility cleared swaps.

[313] Section 45.4(b) as effective prior to this rule release, required DCOs to report continuation data on all swaps cleared by the derivatives clearing organization, including life cycle event data or state data.

§ 45.4 in two different contexts. In commenting on the NPRM, LCH and Eurex expressed concerns with the infrastructure required to have the DCO connected to every SDR chosen by the SD/MSP for which the DCO clears and report terminations according to the technical requirements of each SDR.[314] Eurex specifically indicated that the cost of implementing the required infrastructure would have significant time and financial costs. In commenting on the IDWG Request for Comment, one foreign central counterparty now acting pursuant to a DCO Exemptive Order cited a specific cost for connecting to a new SDR as involving at least 150 man-days.[315] Based on the most recent industry compensation reports, the median cost to a firm for 150 working days by a computer programmer in the finance industry would be $61,000 per DCO to SDR connection.[316] Considering that each DCO must have a connection to at least one registered SDR currently to report beta and gamma swaps under current industry practice, and considering that there are only four registered SDRs, each DCO could be expected to incur at most $183,000 to connect to all registered SDRs. This cost would be reduced to the extent that the DCO has existing connections to more than one SDR or if it clears swaps for clearing members whose original swaps are reported to a limited number of SDRs.

With respect to additional data fields, as discussed above, adopted § 45.4(c)(2) will add three data fields (the LEI of the SDR to which creation data for the clearing swaps was reported, the USI of the original swap, and USIs of the clearing swaps) to the life cycle event data or to state data reported by DCOs as continuation data for original swaps.[317] All three of these data fields are either already in use or can be created by the SDR and reported by the DCO. While requiring the reporting of additional fields imposes costs, DCOs should already possess the information needed for these fields, and the Commission believes that the extra costs to DCOs associated with adopted § 45.4(c)(2) would be minimal. The Commission requested relevant information and quantitative estimates regarding the costs associated with creating and using these fields but did not receive any. As discussed in Section II.C.4.iv above, the Commission would encourage SDRs and DCOs to standardize messages for terminating original swap, which should alleviate some of the burden on DCOs.

ii. Benefits

Adopted § 45.4(c) will ensure that data concerning original swaps remains current and accurate, allowing the Commission to ascertain whether an original swap was terminated through clearing novation. Original swap data that does not reflect the current state of the swap frustrates the use of swap data for regulatory purposes, including, but not limited to, assessing market exposures between counterparties and evaluating compliance with the clearing mandate.[318] The Commission is of the view that, to the extent that DCOs' current practices are not currently in conformance with the adopted rule, requiring the DCO to report continuation data for original swaps is the most efficient and effective method to ensure that data concerning original swaps remains current and accurate as the DCO, through its rules, determines when an original swap is terminated and thus has the quickest and easiest access to authoritative information concerning termination of the original swap.

Adopted § 45.4(c) will ensure that part 45 explicitly addresses DCO part 45 continuation data reporting obligations with respect to original swaps (*i.e.*, alphas).[319] Existing § 45.4(b), which addresses "continuation data reporting for cleared swaps," requires DCOs to report continuation data for "all swaps cleared by a [DCO]," but does not explicitly address the multi-swap framework provided in § 39.12(b)(6).[320] Therefore, uncertainty persists as to whether, under existing § 45.4(b) the DCO must report continuation data for the alpha, beta and gamma swaps. The inconsistent interpretation of this reporting requirement leads to substantial differences in reporting of cleared swaps and presents challenges for regulatory oversight. The continuation data reporting requirements adopted in this rule will make explicit that the DCO has the obligation to report continuation data for original swaps that have been terminated and the clearing swaps that replace a terminated original swap.

The Commission believes that the removal of the requirement that SDs and MSPs report daily valuation data for cleared swaps from § 45.4(b)(2) can result in cost savings to the extent that any SDs and MSPs are not currently relying on no-action relief.[321] In addition, because there are fewer DCOs than non-DCO reporting counterparties, placing the responsibility to report valuation data solely on the DCO will result in a more consistent and standardized valuation reporting scheme, as there would be a dramatic decrease in the number of potential valuation data submitters to SDRs. This will benefit SDRs, regulators, and the public because it would facilitate data aggregation and improve the Commission's ability to analyze SDR data and to satisfy its risk and market oversight responsibilities, including measurement of the notional amount of outstanding swaps in the market.

Adopted § 45.4(c)(2) will require DCOs to report three important continuation data fields for original swaps which will assist regulators in tracing the history of, and associating the individual swaps involved in, a cleared swap transaction, from execution of the original swap through the life of each clearing swap that replaces an original swap, regardless of the SDR(s) to which the original and clearing swaps are reported. The newly required continuation data elements to be reported by the DCOs for original swaps will ensure that original swap continuation data includes sufficient information to identify, by USI, any clearing swaps created from the same original swap, as well as the SDR where those clearing swaps reside. As such, the Commission expects that review of any particular swap in a registered SDR will include a listing of all other relevant USIs with respect to that swap (*e.g.,* original swap and clearing swaps). The Commission believes that this requirement will help ensure the availability of information necessary to link original swaps and clearing swaps, even if those swaps are reported to different SDRs. The ability to link original and clearing swaps across multiple SDRs will decrease data fragmentation and will increase the ability of the Commission to accurately aggregate cleared swap data across various SDRs. As a result, adopted § 45.4(c)(2) will improve the ease of use for cleared swaps data, which will enhance the Commission's ability to perform its regulatory duties, including to protect market participants and the public.

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[314] *See* Eurex Oct. 30, 2015 Letter, at 4–5; LCH Oct. 30, 2015 Letter, at 3.

[315] *See* OTC Hong Kong May 27, 2014 Letter, at 2–3 (contending that setup, application development, and testing to interface with each SDR is likely to require at least 150 man-days, and that a more cost-effective framework would be to require the original counterparty to report termination of the alpha once it receives confirmation that the alpha has been accepted for clearing, and that the original counterparty would already have in place technical and operational interfaces with the SDR of its choice. The commenter also contended that the burden on DCOs of additional reporting outweighs the benefits to the CFTC).

[316] *See* SIFMA Report, Management & Professional Earnings in the Securities Industry 2013 (October 2013), available at *http://www.sifma.org/research/item.aspx?id=8589940603.* This estimate is based on the median total compensation for a Programmer (Code 1604) ($91,050), on an hourly basis assuming 1,800 hours worked per year ($50.83) and an eight hour work day.

[317] "Required swap continuation data" is defined in § 45.1 and includes "life cycle event data" or "state data" (depending on which reporting method is used) and "valuation data." Each of these data types is defined in § 45.1. "Life cycle event data" means all of the data elements necessary to fully report any life cycle event. "State data" means all of the data elements necessary to provide a snapshot view, on a daily basis of all of the primary economic terms of a swap. 17 CFR 45.1.

[318] *See* Swap Dealer *De Minimis* Exception Preliminary Report, (Nov. 18, 2015), at 13–14, available at *http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf.*

[319] The Commission acknowledges that the alternatives separately discussed in the Consideration of Alternatives, Section III.C.10, could also provide these benefits for registered entities and swap counterparties. However, for the reasons explained in that section, the Commission is of the view that the proposed approach is superior to the alternatives.

[320] As discussed earlier in this release, § 39.12(b)(6) provides that upon acceptance of a swap by a DCO for clearing, the original swap is extinguished and replaced by equal and opposite swaps, with the DCO as the counterparty to each such swap. *See* 17 CFR 39.12(b)(6).

[321] *See* CFTC No-Action Letter No. 12–55 (Dec. 17, 2012); CFTC No-Action Letter No. 13–34 (Jun. 26, 2013); CFTC No-Action Letter No. 14–90 (Jun. 30, 2014); and CFTC No-Action Letter No.15–38 (Jun. 15, 2015). Staff no-action relief from the requirements of § 45.4(b)(2)(ii) has been in effect since the initial compliance date for part 45 reporting.

6. USI Creation by DCOs—§ 45.5(d)

Existing § 45.5 requires that each swap subject to the Commission's jurisdiction be identified in all swap recordkeeping and data reporting by a USI. The rule establishes different requirements for the creation and transmission of USIs depending on whether the swap is executed on a SEF or DCM or executed off-facility with or without an SD or MSP reporting counterparty. Existing § 45.5 also provides that for swaps executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM creates the USI, and for swaps not executed on or pursuant to the rules of a SEF or DCM, the USI is created by an SD or MSP reporting counterparty, or by the SDR if the reporting counterparty is not an SD or MSP.

Amended rule § 45.5(d) will require a DCO to generate and assign a USI for a clearing swap upon, or as soon as technologically practicable after, acceptance of an original swap by the DCO for clearing (in the event the clearing swap replaces an original swap) or execution of a clearing swap (in the event that the clearing swap does not replace an original swap), and prior to reporting the required swap creation data for the swap. Amended § 45.5(d) contains provisions governing creation and assignment of USIs by the DCO that are consistent with analogous provisions governing creation and assignment of USIs by SEFs, DCMs, SDs, MSPs, and SDRs.

All comments received with respect to amended § 45.5(d) were supportive of the change and there were no comments with regards to the costs and benefits of this amendment.

i. Costs

The Commission believes that adopted § 45.5(d) is largely consistent with industry practice and will not result in any additional costs for DCOs. Any DCOs that will not be in complete conformance with the adopted rule may need to enhance their existing technological protocols in order to create USIs in house, but these marginal costs would likely be lower than the costs associated with obtaining a USI with a separate USI-creating entity. The Commission believes that creating USIs in-house, rather than with a different USI creating entity, is less costly for DCOs and the Commission did not receive any data on that comparison or on any other quantifiable cost structures associated with § 45.5(d).

ii. Benefits

As noted above, the existing part 45 regulations do not explicitly address the assignment of USIs to swaps that fall within the adopted definition of clearing swaps. Explicitly requiring DCOs to generate, assign, and transmit USIs for clearing swaps will provide regulatory certainty with respect to the generation and assignment of USIs for clearing swaps. The adopted rule will also help ensure consistent and uniform USI creation and assignment for such swaps and will allow regulators to better identify and trace the swaps generally involved in cleared swap transactions, from execution of the original swap through the life of each clearing swap.

7. Determination of the Reporting Counterparty for Clearing Swaps—§ 45.8

Current § 45.8 establishes a hierarchy under which the reporting counterparty for a particular swap depends on the nature of the counterparties involved in the transaction. DCOs are not included in the existing § 45.8 hierarchy. The Commission is adopting § 45.8(i) in order to identify DCOs in the hierarchy as the reporting counterparty for clearing swaps.

One commenter supported proposed § 45.8(i) as it promoted efficiency in reporting by explicitly designating the DCO as the reporting party for clearing swaps.[322] There were no other comments with respect to the costs and benefits of this amendment.

i. Costs

The Commission believes that the adopted amendments to § 45.8, in and of themselves, will not impose any additional costs on registered entities or reporting counterparties. The Commission believes that the rule simply reflects established reporting arrangements, which, to the Commission's understanding, is for the DCO to submit data to the SDR for swaps that would fall within the definition of clearing swaps.

ii. Benefits

As noted above, clearing swaps are not explicitly acknowledged in existing § 45.3, and DCOs are not identified as reporting counterparties in the reporting counterparty hierarchy of § 45.8. The Commission acknowledges the comment by AIMA that one benefit of proposed § 45.8(i) is that it improves efficiency in reporting by explicitly designating the DCO as the reporting party for clearing swaps. In addition, the Commission expects that modifications to the § 45.8 reporting counterparty hierarchy will eliminate ambiguity regarding which registered entity or swap counterparty is required to report required creation data for clearing swaps, explicitly delineating the nature and extent of DCO reporting obligations, and affording market participants and SDRs a more precise and accurate understanding of reporting obligations under part 45.

8. Reporting to a Single Swap Data Repository—§ 45.10

Existing § 45.10 requires that all swap data for a given swap must be reported to a single SDR, which must be the same SDR to which creation data for that swap is first reported. The time and manner in which such data must be reported to a single SDR depends on whether the swap is executed on a SEF or DCM or executed off-facility with or without an SD/MSP reporting counterparty. The Commission is amending § 45.10 to require DCOs to report all data for a particular clearing swap to a single SDR. Moreover, consistent with current industry practice, amended § 45.10(d)(3) will require the DCO to report all required swap creation data for each clearing swap that replaces a particular original swap (*i.e.,* the beta and gamma that replace a particular alpha) to a single SDR, such that all required creation data and all required continuation data for all clearing swaps that can be traced back to the same original swap will be reported to the same SDR (although not necessarily the same SDR as the original swap).

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[322] *See* AIMA Oct. 30, 2015 Letter, at 6.

i. Costs

The Commission does not expect DCOs to incur any new costs associated with ensuring that clearing swap data is reported to a single SDR because the requirements of the adopted rule are, to the Commission's understanding, consistent with current DCO reporting practice.

ii. Benefits

The Commission believes that the benefit of reporting data associated with each clearing swap to a single SDR is that all required creation data, all required continuation data for related clearing swaps and, by extension, USIs linking clearing swaps to the original swap, will be stored with the same SDR. This will minimize confusion on the part of SDRs and regulators regarding which swaps are still active and which ones have been terminated. The Commission notes that the benefits of reporting all data for clearing swaps to the same SDR are currently being realized, as it is current industry practice for DCOs to report swaps that will fall under the amended definition of clearing swaps in conformance with adopted § 45.10(d)(3).

9. PET Data—Adopted Amendments to the Primary Economic Terms Data Tables

The Commission's current lists of minimum (required) primary economic terms for swaps in each swap asset class are found in tables in Exhibits A–D of appendix 1 to part 45. With this final release, the Commission has modified the descriptions of some PET fields applicable to all swaps, added some PET fields applicable to all swaps, and added some PET fields applicable only to clearing swaps. For PET fields applicable to clearing swaps, the Commission is adding several new data elements under the heading "Additional Data Categories and Fields for Clearing Swaps" to Exhibits A–D in order to more accurately capture the additional, unique features of clearing swaps that are not relevant to original swaps or uncleared swaps. The newly proposed data fields include: The USI for the clearing swap; the USI for the original swap; the SDR to which the original swap was reported; clearing member LEI, clearing member client account origin, house or customer account; clearing receipt timestamp; and clearing acceptance timestamp.

As for PET field modifications and additions relevant for all swaps, the Commission is also adding several new required data elements, which will be applicable to all swaps, and making conforming changes to some existing data elements. The newly added fields include: Asset class, an indication of whether the reporting counterparty is a DCO with respect to the swap, and clearing exception or exemption types.

The Commission has received various comments with respect to the proposed changes to the primary economic terms data but few that address the cost and benefits of the changes are summarized below.[323] ISDA commented on the proposed "Clearing exception or exemption type" PET field, which would require the reporting party to identify the clearing exemption exercised for a particular swap.[324] ISDA commented that it could be challenging and costly for firms to implement this change, while providing no new information because exception and exemption elections must already be provided to SDRs. Because existing reporting standards can identify inter-affiliate trades, ISDA recommended that the "Clearing exception or exemption type" PET field acceptable values be limited to "inter-affiliate" and "other."

With respect to ISDA's comment, SDs are already required already to submit to SDRs information on any clearing exception or exemption elections made by their counterparties pursuant to part 50. The Commission believes that reporting information on clearing exception or exemption elections on a transactional basis, in the manner described in the proposed changes to the primary economic terms, should not substantially increase costs on reporting counterparties.

i. Costs

The Commission emphasizes that, as a result of the amendments to the PET data tables for clearing swaps, the newly added data fields for clearing swaps will be reported exclusively by DCOs. While there might be costs associated with reporting newly added data fields, the Commission believes that DCOs are better situated than swap counterparties to report the additional fields for clearing swaps without the substantial costs and operational burdens because DCOs already possess certain information, or other registered entities and swap counterparties are required to transmit the information to DCOs, regarding those fields. For example, the data necessary to report the adopted "original swap SDR" field is currently required to be transmitted to the DCO under existing § 45.5, and the Commission understands that data required by the amended "clearing receipt timestamp" and "clearing acceptance timestamp" fields may already be generated and present in DCO systems—such DCOs would just have to transfer those timestamps to the reporting system for each clearing swap. Similarly, the Commission understands that house or customer account designations are already collected and maintained in relation to certain part 39 reporting obligations. Hence, there will be no additional cost in collecting the information necessary to report the "origin (house or customer)" field, and marginal costs might stem from conveying the information in part 45 swap data reports. The Commission solicited comments on the extent to which DCOs may already possess the information required by the amended additional fields and the costs associated with obtaining and/or reporting such information but did not receive any comments or estimates on this topic.

While the Commission requested the data needed to quantify the cost of the addition of three data fields applicable to all reporting entities (asset class, DCO indicator, and clearing exception or exemption type), the Commission did not receive any quantifiable estimates of costs associated with creating and using these fields from commenters. The Commission believes that the costs associated with these additional fields will not be substantial since the information necessary to report these data elements is likely to be readily available in connection with the execution of swaps, with some marginal costs stemming from the requirement to include the information in PET data reported to an SDR (to the extent that such information is not already reported). The Commission understands that in at least some cases, market practice is to report some of the information required by the proposed three new data fields applicable to all reporting entities for all swaps.

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[323] One commenter cautioned that the definitions used in the markets are not always consistent with those proposed by the NPRM, which places a significant burden on small-sized market participants. *See* JBA Oct. 30, 2015 Letter, at 2–3. Because the only new fields either relate solely to clearing swap reporting (and therefore affect only DCOs), reference terms defined in the Regulations (such as "Asset class"), or reference the application of certain provisions of the Regulations (such as "Clearing Exception or Exemption Type"), the Commission believes the terms in the new PET data fields are sufficiently clear to avoid any costs or burden cited by this commenter.

[324] *See* ISDA Oct. 30, 2015 Letter, at 9.

ii. Benefits

The Commission believes that the additions to the list of minimum primary economic terms will result in a variety of benefits. Clearing swap PET fields, such as USI for the original swap or the SDR to which the original swap was reported, can facilitate the monitoring of each original swap by SDRs and regulators. Clearing swap PET fields can also prevent potential double-counting of swap transactions or notional amounts, thus improving the accuracy of SDR data for use by the Commission in such activities as evaluating swap dealer *de minimis* thresholds. Other proposed fields such as clearing member LEI or clearing member client account information will facilitate the Commission's assessment of risk management of market participants, promoting the protection of the financial integrity of the markets and the protection of market participants and the public.

The new PET fields for all swaps also will benefit the Commission in performing its regulatory obligations. The asset class data field will assist the Commission in determining the asset class for swaps reported to SDRs, enhancing the Commission's ability to identify swaps activity in each asset class as well as the capability to use the data for regulatory purposes. The indication of whether the reporting counterparty is a DCO with respect to the swap data field will help the Commission monitor DCOs' compliance with reporting of clearing swap data elements, and improve the Commission's ability to analyze swap data relating to cleared swap transactions. The clearing exception or exemption types data field will enable the Commission to ascertain the specific exception or exemption from the clearing requirement that was elected and will assist in the evaluation of compliance with the clearing requirement, as well as assessing market activity in uncleared swaps.

10. Consideration of Alternatives

The Commission considered the costs and benefits of certain alternatives raised by commenters in response to the IDWG Request for Comment and the NPRM, including whether part 45 should require intended to be cleared swaps (original swaps) to be reported to registered SDRs. Some commenters noted that reporting of alpha swaps is beneficial and should continue to be required,[325] while other commenters contended that alpha swaps should not be required to be reported to an SDR and questioned the benefits of requiring the reporting of alpha swaps.[326]

Some commenters stated that the Commission should require clearing swaps to be reported to the same SDR as original swaps, so that the entire history of a swap would reside at the same SDR.[327] A number of commenters suggested that part 45 should place swap data reporting obligations solely on DCOs, including with respect to swaps that are intended to be cleared at the time of execution and accepted for clearing by a DCO (swaps commonly known as "alpha" swaps) and swaps resulting from clearing (swaps commonly known as "beta" and "gamma" swaps).[328] However, other commenters noted that it would not be appropriate to require a DCO to report information related to the execution of an alpha swap.[329]

In light of these comments, the Commission considered the costs and benefits of six alternatives in comparison to the costs and benefits of the proposed rule: (1) Requiring original and clearing swaps to be reported to the same SDR chosen by the reporting counterparty or SEF/DCM; (2) requiring original and clearing swaps to be reported to the same SDR chosen by the DCO accepting the swap for clearing; (3) requiring only one report for each swap intended for clearing, that is, not requiring original (alpha) swaps to be reported separately from clearing swaps, with the SDR chosen by the reporting counterparty or SEF/DCM; (4) requiring only one report for each swap intended for clearing as in (3), but with the SDR chosen by the DCO accepting the swap for clearing; (5) requiring the DCO to report both the original swap and all resulting clearing swaps, to the SDR of its choosing; and (6) requiring the original swap reporting counterparty to report the creation and the termination of the original swap.[330]

The first two alternatives each require swaps that become original swaps and the resulting clearing swaps to be reported to the same SDR. If such swaps were reported to the same SDR, there would be no need for certain requirements in proposed § 45.4(c) that extra fields, such as clearing swap SDR, be included in the report to the SDR for the clearing swap to link the clearing swap to an original swap on a different SDR. Similarly, the need for certain clearing swap PET data fields, such as the identity of the original SDR, intended to be used for linking purposes, might not be necessary. This would reduce costs to the extent that certain PET data fields would not be required to link the original and clearing swaps. The first approach would require DCOs to connect to multiple SDRs to the same extent as the adopted rules. However, the second approach could require reporting counterparties or SEFs/DCMs to connect to multiple SDRs, which could increase costs for a larger number of market participants.

Because the adopted rule more closely reflects current industry practice relative to the alternative, there would be some potentially significant one-time costs, including the costs of changes to existing systems, associated with changing practices to conform to the alternatives. Additionally, a substantial portion of aggregation costs for regulators, and, likely, market participants, arises from the current landscape, which includes multiple SDRs. The adopted requirements to link original and clearing swaps at multiple SDRs is a relatively minor burden compared with the existing burden on the Commission, and potentially other regulators, in reconciling swap data for a cleared swap transaction across multiple SDRs without data elements linking the original and clearing swaps. Additionally, costs associated with monitoring and aggregation would likely be mitigated by the continuation data fields of adopted § 45.4(c)(2), which would enable regulators to more effectively connect original swaps at one SDR with clearing swaps at another SDR. Also, as noted in Section II.B.4.iv, above, these options could also introduce delays in reporting under both part 43 and part 45, which could undermine the price discovery function of real-time reporting.

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[325] *See* TR SEF May 27, 2014 Letter, at 10; AFR May 27, 2014 Letter, at 5; Markit May 27, 2014 Letter, at 25; and DTCC May 27, 2014 Letter, at 17–18.

[326] *See* AIMA Oct. 30, 2015 Letter, at 2–6; EEI/EPSA Oct. 30, 2015 Letter, at 3; CEWG Oct. 30, 2015 Letter. At 2; SIFMA May 27, 2014 Letter, at 4; CEWG May 27, 2014 Letter, at 15; CME May 27, 2014 Letter, at 2–3

[327] *See* DTCC Oct. 30, 2015 Letter, at 3; DTCC May 27, 2014 Letter, at 2–3, appendix at 4, 21 (arguing that the Commission should adopt a "single SDR" rule to ensure that all of the data for a swap is available in one SDR); ISDA May 27, 2014 Letter, at 44.

[328] *See* CMC Oct. 30, 2015 Letter, at 2–3; CME Oct. 30, 2015 Letter, at 2–3; AIMA Oct. 30, 2015 Letter, at 6; CEWG Oct. 30, 2015 Letter, at 3; CMC May 27, 2014 Letter, at 1, 3, 6; NFPEA May 27, 2014 Letter, at 12; EEI/EPSA May 27, 2014 Letter, at 3, 14; ITV May 27, 2014 Letter, at 3, 17; CEWG May 27, 2014 Letter, at 16; CME May 27, 2014 Letter, at 20; and NFP Electric Associations May 27, 2014 Letter, at 4.

[329] *See* ISDA Oct. 30, 2015 Letter, at 4; LCH Oct. 30, 2015 Letter, at 2; Eurex Oct. 30, 2015 Letter, at 4; LCH May 29, 2014 Letter, at 10.

[330] The Commission highlighted the first four alternatives in its NPRM, and added the last two in light of comments provided in response to the NPRM.

Regarding who would choose the single SDR, the SDR could be chosen by the reporting counterparty (or DCM or SEF) or by the DCO. Under either of the first two alternatives, one registered entity or counterparty's choice of SDR would bind a second registered entity or counterparty to also report to that SDR, which could be an SDR that the second registered entity or counterparty would not otherwise select. Allowing the reporting counterparty or SEF/DCM to choose the SDR would enable the reporting party to choose the SDR with the best combination of prices and service, and thus may promote competition among SDRs. Allowing the DCO to choose the SDR for both original and clearing swaps would likely result in the DCO always choosing the same SDR, which may be the SDR that is affiliated with the DCO (that is, shares the same parent company). This would reduce costs for DCOs since they would need to maintain connectivity with only one SDR, but would limit the ability of SDRs to compete since DCOs could choose to report only to SDRs with which they are affiliated.[331]

Under the third and fourth alternatives, there would be no requirement to report intended to be cleared swaps (original swaps) separately from the resulting clearing swaps. Rather, there would only be one report for each cleared swap transaction. This would be a change from current swap market practice. As with the first two alternatives, the choice of SDR could be made by the reporting counterparty as determined under current § 45.8, or by the DCO as under adopted § 45.8(i). If there is only one report for each cleared swap transaction, there would be ongoing cost savings associated with the need to make fewer reports to SDRs. As with the first two alternatives, there would be no need for the requirement in adopted § 45.4(c) that extra fields, such as clearing swap SDR, be included in the report to the SDR to link the clearing swap to an original swap on a different SDR, and market participants and the Commission could access all information about a single cleared swap transaction at a single SDR. This would also reduce costs relative to the adopted rule. However, the benefits of separate reports for original and clearing swaps would be foregone and there may be a less complete record of the history of each cleared swap. Moreover, it would be more difficult for the Commission to determine the original counterparties, original execution time, and other vital information on the original swap for market surveillance or enforcement purposes. It may be possible to reclaim these benefits through requiring additional fields in each cleared swap report, although this would also increase costs and would require DCOs to receive and report information beyond what is otherwise required for clearing purposes. Additionally, because the adopted rule more closely reflects current industry practice relative to these alternatives, there would be some potentially significant one-time costs, including the costs of changes to existing systems, associated with changing practices to conform to the alternatives. The effects of who chooses the SDR are similar to the effects described for the first two alternatives.

Under the fifth alternative, the DCO would report both the swap that becomes the original swap (including creation data and termination) and all clearing swaps resulting from clearing of the original swap. While one DCO and some end-users supported this alternative as simplifying work flows and reducing costs to original swaps counterparties,[332] other DCOs opposed requiring DCOs to report original and clearing swaps because DCOs would not have all information required to report original swaps.[333] While recognizing that this alternative could reduce costs for reporting counterparties, the Commission declined to adopt this alternative as DCOs would not have all information necessary to submit such reports. Further, the Commission declined to adopt this alternative because of negative impacts on the timeliness of reporting real-time pricing information under part 43.

Finally, under the sixth alternative, the reporting counterparty to the original swap would be required to report the termination of that swap upon acceptance for clearing. As addressed above in the discussion of final § 45.4, the Commission believes that DCOs would be in a better position to report the termination of the original swap, and would have all information necessary to report such terminations.

The Commission has determined not to adopt the alternatives listed above because the final rule is more consistent with current industry practice than such alternatives. The Commission understands that reporting counterparties and registered entities are already set up to report alpha swaps to registered SDRs (whether or not such swaps are intended to be cleared at the time of execution) and that DCOs are already set up to report beta and gamma swaps that result from acceptance of a swap for clearing, and have been making such reports. Accordingly, the industry has already incurred the costs of setting up a system for reporting cleared swap transactions to SDRs (including separate reports for swaps that would fall within the proposed definitions of original and clearing swaps). Changing this system to conform to an alternative rule would have certain costs to reporting entities.

The Commission also believes that clarifying distinct reporting requirements in part 45 for alphas (swaps that become original swaps) and betas and gammas (clearing swaps that replace original swaps) presents a full history of each cleared swap transaction and permits the Commission and other regulators to identify and analyze each component part of such transactions. The Commission also continues to believe that placing the part 45 reporting obligation on the counterparty or registered entity closest to the source of, and with the easiest and fastest access to, complete and accurate data regarding a swap fosters accuracy and completeness in swap data reporting. In light of these benefits, the Commission will maintain the current industry practice of separately reporting both alpha swaps (*i.e.*, swaps that would become original swaps under the proposed rules) and beta and gamma swaps (*i.e.*, clearing swaps as defined under the proposed rules).

Additionally, the multi-swap reporting approach adopted in this rule is largely consistent with the approach proposed by the SEC in its release proposing certain new rules and rule amendments to Regulation SBSR,[334] and is also largely consistent with the approach adopted by several foreign regulators.[335] Given that the swaps market is global in nature, the Commission anticipates that adopting an approach to the reporting of cleared swaps in the United States that is consistent with the approaches adopted in other jurisdictions may minimize compliance costs for entities operating in multiple jurisdictions.

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[331] The Commission requested comment on the extent to which SDRs compete on the basis of price or service and the extent to which SDRs are chosen on the basis of relationships with registered entities and reporting counterparties. Markit commented on DCOs using affiliated SDRs for reporting, which is addressed in the Antitrust Considerations, Section III.D, below.

[332] *See* CME Oct. 30, 2015 Letter, at 6–7; CMC Oct. 30, 2015 Letter, at 2–3.

[333] *See* LCH Oct. 30, 2015 Letter, at 2; Eurex Oct. 30, 2015 Letter, at 4.

[334] *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015).

[335] The Commission's understanding is that a number of jurisdictions, including the European Union, Singapore, and Australia, for example, also account for a multi-swap approach to the reporting of cleared swaps.

11. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

(1) *Protection of market participants and the public.* In the Final Part 45 Rulemaking, the Commission stated that the data reporting requirements of part 45 provided for protection of market participants and the public by providing regulatory agencies with a wealth of previously unavailable data in a unified format, greatly enhancing the ability of market and systemic risk regulators to perform their oversight and enforcement functions.[336] The Commission believes that the adopted amendments outlined in this final release will enhance these protections by explicitly providing how and by whom each of the swaps involved in a cleared swap transaction should be reported. In particular, by requiring DCOs to electronically report the creation data and continuation data for clearing swaps, the Commission believes that data on all clearing swaps associated with a specific original swap will be aggregated at the same SDR, provided by a single entity and readily available for accurate and complete analysis. This will also allow the Commission and other regulators to access all data pertaining to related clearing swaps from a single SDR. These enhancements should allow for efficiencies in oversight and enforcement functions, resulting in improved protection of market participants and the public.

(2) *The efficiency, competitiveness and financial integrity of the markets.* In the Final Part 45 Rulemaking, the Commission stated that the swap data reporting requirements of part 45 would enhance the financial integrity of swap markets.[337] The Commission also stated that part 45's streamlined reporting regime, including the counterparty hierarchy used to select the reporting counterparty, could be considered efficient in that it assigns greater reporting responsibility to more sophisticated entities more likely to be able to realize economies of scale and scope in reporting costs.[338] The Commission believes that the amendments in this final release will further enhance this efficiency by requiring DCOs to report where they are the party best equipped to do so.[339] In addition, by explicitly delineating reporting responsibilities associated with each component of a cleared swap transaction, the adopted rules should result in improved reliability and consistency of the swaps data reported, further enhancing the financial integrity of the swap markets.

The rule confirming that the reporting counterparty or SEF/DCM has the right to choose the SDR for the original swap can promote competition among SDRs. However, the Commission also acknowledges that by allowing DCOs to choose the SDR to which they report, competition for SDR services can be impacted as a result of DCOs reporting to their affiliated SDR, that is, an SDR that shares the same parent company as the DCO. Any such impact on competition will be a consequence of business decisions designed to realize costs savings associated with the affiliations between DCOs and SDRs. The Commission notes that section 21 of the CEA permits a DCO to register as an SDR.

(3) *Price Discovery.* In the Final Part 45 Rulemaking, the Commission stated that the swap data reporting requirements of part 45 did not have a material effect on the price discovery process.[340] The Commission believes that the adopted amendments also will not have a material effect on price discovery.

(4) *Risk Management.* In the Final Part 45 Rulemaking, the Commission stated that the data reporting requirements of part 45 did not have a material effect on sound risk management practices.[341] The Commission believes that the adopted amendments also will not have a material effect on sound risk management practices.

(5) *Other Public Interest Considerations.* In the Final Part 45 Rulemaking, the Commission stated that the data reporting requirements will allow regulators to readily acquire and analyze market data, thus streamlining the surveillance process.[342] The Commission preliminarily believes that the amendments outlined in this release will enhance this consideration by providing certainty about how and by whom each of the swaps involved in a cleared swap transaction should be reported.

As noted earlier in this release, the multi-swap reporting approach proposed in this final release is largely consistent with the approaches proposed by the SEC and adopted by several foreign regulators. Given that the swaps market is global in nature, the Commission anticipates that adopting an approach that is consistent with the approaches adopted by other regulators may further other public interest considerations by reducing compliance costs for entities operating in multiple jurisdictions.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws, and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or Regulation. The Commission evaluated the amendments to Part 45 in the context of 7 U.S.C. 2(a)(13)(G) and 7 U.S.C. 24a, which were adopted by Congress as part of the Dodd-Frank Act. These provisions require each swap, whether cleared or uncleared, to be reported to a registered SDR. The Dodd-Frank Act was enacted to reduce systemic risk, increase transparency, and promote market integrity by, among other things, creating rigorous data reporting regimes with respect to swaps, including real time reporting.[343] As noted in this release, the Commission has adopted these amendments to help ensure that cleared swaps transactions are reported to SDRs in a consistent and accurate way to allow the Commission to evaluate market risk and monitor for abusive trading practices.

In the Final Part 45 Rulemaking, the Commission identified choice of SDR as one area of the rules that could potentially have an impact on competition.[344] In that release, the Commission stated that the adopted rule governing who makes the initial creation data report and selects the SDR "favors market competition, avoids injecting the Commission into a market decision, and leaves the choice of SDR to be influenced by market forces and possible market innovations."[345]

In the NPRM proposing amendments on cleared swap reporting, the Commission asked for comments on any anticompetitive impacts of the proposed cleared swaps reporting rules.[346] In response to the NPRM, the Commission received two comments directly addressing competitive concerns. DTCC and Markit both commented that allowing a DCO to select the SDR for clearing swaps will impact competition as some DCOs have affiliated SDRs, which may allow DCOs to bundle clearing services with SDR services.[347]

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[336] 77 FR 2136, 2188.

[337] *Id.* at 2189.

[338] *Id.*

[339] As noted earlier in this release, the Commission's understanding is that the DCO is the entity that should have the easiest and quickest access to full information with respect to PET data and confirmation data for clearing swaps, as well with respect to terminations of original swaps.

[340] 77 FR 2136, 2189 (Jan. 13, 2012).

[341] *Id.* at 2189.

[342] *Id.*

[343] 77 FR 2136, 2137.

[344] 77 FR 2136, 2149.

[345] 77 FR 2136, 2149.

DTCC commented that allowing the DCO to report to an affiliated SDR, particularly after the original swap has already been reported to a different SDR, will further entrench DCOs' vertical integration in trade execution, clearing, and data reporting.[348] DTCC argued that this would, in turn, increase barriers to entry for exchanges, clearinghouses, and independent SDRs that are unaffiliated with DCOs.[349] As an alternative, DTCC proposed to grant the registered entity or reporting counterparty that is obligated to report the original swap the ability to select the SDR to which the clearing swaps must be reported by the DCO.[350]

Markit argued that allowing the DCO to select the SDR to which clearing swaps are reported would provide regulatory approval for anticompetitive tying of clearing and reporting services.[351] Markit contrasted the current marketplace for clearing services with what existed in March 2013 when the Commission approved CME Rule 1001, and alleged that concentration has increased since 2013.[352] In support, Markit argued that one DCO—which is affiliated with an SDR—clears 87 percent of global credit index swaps.[353] As an alternative to the Commission's proposal, Markit proposed that the reporting counterparty for an original swap be permitted, at its discretion, to both report the resulting clearing swaps and select the SDR to which the clearing swaps are reported. Under Markit's proposal, the reporting counterparty to the original swap would also be permitted to delegate this reporting and SDR selection responsibility to the DCO.[354]

The Commission has taken into consideration the public interest to be protected by the antitrust laws, and endeavored to take the least anticompetitive means of achieving the objectives of the CEA in adopting this final rule. Having considered the comments raised by DTCC and Markit, the Commission believes that the amendments to part 45 concerning choice of SDR announced in this release meet this least-anticompetitive-means standard.

The mix of entities reporting swaps to the various SDRs illustrates how the choice of SDR currently operates in the marketplace. Presently there are four registered SDRs to which swaps may be reported. Two of the SDRs (CME and ICE Trade Vault) are affiliated with DCOs and contain swaps data reported by those DCOs, as well as data reported by SEFs, SDs, and non-SD/MSP market participants. These SDRs receive swap data on uncleared swaps, as well as both the original swaps and clearing swaps from cleared swap transactions. One SDR (DTCC) is a subsidiary of a large financial services utility and has ownership and governance ties to a number of swap dealers. DTCC receives swap data from a number of those swap dealers, as well as SEFs, non-SD/MSP market participants, and at least one DCO. DTCC receives swaps reporting for a large number of uncleared swaps, as well as original swaps whose associated clearing swaps are reported at either DTCC or a DCO-affiliated SDR. The fourth SDR (Bloomberg) is corporately affiliated with a SEF and available to accept data from, among others, SEFs/DCMs, DCOs, and reporting counterparties. Also relevant to this discussion, some SD/MSPs and SEFs report swaps to multiple SDRs. Some SDs and SEFs, even those with corporate affiliations or ownership links to SDRs, report some swaps to SDRs to which they have no such connections. The mix of swaps reported to each SDR (uncleared, original and clearing swaps) and the mix of reporting entities using each SDR are the result of market participants' decisions on how to fulfill reporting obligations.

Consumers of SDR services under these amendments are the entities with the first reporting obligation on a swap: SEFs/DCMs for uncleared or original swaps executed on-facility; reporting counterparties (primarily swap dealers, but also non-SD/MSP market participants) for uncleared or original swaps executed off-facility; and DCOs for clearing swaps. The amendments place the choice of SDR for each individual swap with the entity first required to report data on that swap. The amendments do not place the choice of SDR with a single entity or counterparty with respect to more than one swap. In other words, the choice of SDR will be made as to a particular swap when a registered entity or reporting counterparty that is required to report the swap makes the first report of all creation data on a particular swap.[355] Because each reporting entity responsible for the first report of a swap would have its choice of SDR, the Commission does not believe that the amendments to Part 45 in this release will significantly impact the mix of swaps reported to each SDR and the mix of reporting entities using each SDR, as described above.

In determining which entity may select the SDR for the original and separately for clearing swap components of a cleared swap transaction, the Commission considered three alternatives that potentially could achieve the objectives of the CEA: (a) Allowing the entity initially reporting an original swap to select the SDR for both the original and clearing swaps, by requiring clearing swaps to be reported to the same SDR as the original swaps they replace; (b) allowing the DCO to select the SDR for both the original and clearing swaps; or (c) allowing the entity first reporting a swap to select the SDR, specifically by allowing the original swap reporting entity to select the SDR for the original swap and the DCO to select the SDR for the clearing swaps. Of the three, the Commission considers its ultimate decision—option (c)—to be the least anticompetitive to satisfy its regulatory objectives. Both option (a) and (b) hold significant potential for a particular constituency group—namely swap dealers or DCOs, respectively— to assume an outsized role in shaping the evolving SDR landscape to favor the competitive interests of particular SDRs to which they have financial ties.[356] In contrast, option (c) minimizes this potential by diffusing the SDR selection role across different categories of reporting entities. No reporting entity (such as an individual DCO) or group of similarly situated reporting entities

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[346] 80 FR 52571.

[347] *See* Markit Oct. 30, 2015 Letter, at 3–5; DTCC Oct. 30, 2015 Letter, at 7.

[348] *See* DTCC Oct. 30, 2015 Letter, at 7.

[349] *See* DTCC Oct. 30, 2015 Letter, at 7.

[350] *See* DTCC Oct. 30, 2015 Letter, at 7.

[351] *See* Markit Oct. 30, 2015 Letter, at 4.

[352] *See* Markit Oct. 30, 2015 Letter, at 4.

[353] *See* Markit Oct. 30, 2015 Letter, at 4–5.

[354] *See* Markit Oct. 30, 2015 Letter, at 5.

[355] As discussed in section III.C.4. above, § 45.3(j) provides that the registered entity or counterparty required to report swap creation data has the choice of SDR when fulfilling its obligations under §§ 45.3(a)–(e).

[356] As noted, DTCC has ownership and governance ties to a number of swap dealers. Additionally, some swap dealers in the DTCC ownership consortium have ownership and/or governance ties to certain SEFs. Accordingly, the Commission sees a strong incentive for swap dealers and swap dealer-affiliated SEFs to select DTCC as the SDR to the extent this part 45 amendment grants them authority to do so.

Conversely, the Commission foresees a strong likelihood that DCO's that have affiliate SDRs, will select their respective SDR affiliates to the extent this part 45 amendment grants them authority to do so and doing so is consistent with their core principle obligations. As discussed below, the CME Group DCO currently has a rule providing that all swaps that it clears be reported to the CME-affiliated SDR.

(such as SDs that have an ownership interest in an SDR) would be able to dictate where another reporting entity reports a swap. As a result, swaps reporting should not become concentrated in a single SDR associated with either DCOs or SDs. On the contrary, even assuming that all SDs choose to report all original and uncleared swaps to DTCC while ICE and CME report all clearing swaps to their affiliated SDRs, swaps reporting will be diffused across at least three SDRs. At the same time, the adopted amendments allow reporting entities to take advantage of costs savings and efficiencies by selecting an SDR with which the reporting entity has an existing relationship.

In the context of this rulemaking, the Commission believes that the concerns of DTCC and Market are misdirected. The criticism of both commenters pivots on the fundamental view that "the proposed rule unnecessarily permits DCOs to bundle services" and that anticompetitive consequences flow from such bundling.[357] The instant amendment, however, merely specifies who, in a particular circumstance, will select the SDR to which a particular swap will be reported; the amendment neither permits nor prohibits DCO/SDR bundling—it does not speak to the issue at all. To the extent that a particular DCO reports all of its swaps to a particular SDR (pursuant to a DCO rule or otherwise), it must do so consistent with its core principle obligations, including Core Principle N.[358] This amendment does not alter or otherwise impact that obligation. DCO registration is contingent upon ongoing compliance with Core Principle N.[359] Thus the question of whether a particular DCO may be restraining trade or imposing an anticompetitive burden through the manner in which it exercises its § 45.3(j) SDR-choice (including under a theory of anticompetitive tying) is properly addressed as a matter of DCO compliance with Core Principle N.[360]

IV. Compliance Dates

Because some revisions and additions to part 45 create new reporting obligations or clarify existing reporting obligations, while some remove obligations presently covered by no-action or other relief, the Commission is adopting this release on a bifurcated basis. The deletion of former § 45.4(b)(2)(ii), requiring that SD/MSP counterparties to clearing swaps report valuation data on those swaps, shall be effective upon publication in the **Federal Register.**

Compliance with all other revisions and additions to part 45 adopted in this release shall be required one hundred and eighty (180) days after this release is published in the **Federal Register.** The Commission has noted comments on the need for market participants, SDRs, DCOs, and other affected parties to update systems to comply with the proposed changes to part 45.[361] Therefore, the Commission is adopting the revisions and additions to part 45 with compliance dates for new obligations that will provide sufficient time to update and test reporting systems.

List of Subjects in 17 CFR Part 45

Data recordkeeping requirements and data reporting requirements, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 45 as set forth below:

PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

■ 1. The authority citation for part 45 is revised to read as follows:

Authority: 7 U.S.C. 6r, 7, 7a–1, 7b–3, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

■ 2. Amend § 45.1 as follows:
■ a. Add a definition for "clearing swap" in alphabetical order;
■ b. Revise the definition of "derivatives clearing organization"; and
■ c. Add a definition for "original swap" in alphabetical order.

The additions and revisions read as follows:

§ 45.1 Definitions.

* * * * *

Clearing swap means a swap created pursuant to the rules of a derivatives clearing organization that has a derivatives clearing organization as a counterparty, including any swap that replaces an original swap that was extinguished upon acceptance of such original swap by the derivatives clearing organization for clearing.

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Derivatives clearing organization means a derivatives clearing organization, as defined by § 1.3(d) of this chapter, that is registered with the Commission.

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Original swap means a swap that has been accepted for clearing by a derivatives clearing organization.

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■ 3. Revise § 45.3 to read as follows:

§ 45.3 Swap data reporting: Creation data.

Registered entities and swap counterparties must report required swap creation data electronically to a swap data repository as set forth in this section and in the manner provided in § 45.13(b). The rules governing acceptance and recording of such data by a swap data repository are set forth in § 49.10 of this chapter. The reporting obligations of swap counterparties with respect to swaps executed prior to the applicable compliance date and in existence on or after July 21, 2010, the date of enactment of the Dodd-Frank Act, are set forth in part 46 of this chapter. This section and § 45.4 establish the general swap data reporting obligations of swap dealers, major swap participants, non-SD/MSP counterparties, swap execution facilities, designated contract markets, and derivatives clearing organizations to report swap data to a swap data repository. In addition to the reporting obligations set forth in this section and in § 45.4, registered entities and swap counterparties are subject to other reporting obligations set forth in this chapter, including, without limitation, the following: Swap dealers, major swap participants, and non-SD/MSP counterparties are also subject to the reporting obligations with respect to corporate affiliations reporting set forth in § 45.6; swap execution facilities, designated contract markets, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to real time reporting of swap data set forth in part 43 of this chapter; counterparties to a swap for which an exception to, or an exemption from, the clearing requirement has been elected under part 50 of this chapter are subject to the reporting obligations set forth in part 50 of this chapter; and, where applicable, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to large traders set forth in parts 17 and 18 of this chapter. Paragraphs (a) through (d) of this section apply to all swaps except clearing swaps, while paragraph (e) applies only to clearing swaps.

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[357] DTCC Oct. 30, 2015 Letter, at, p. 7; *see also,* Markit Oct. 30, 2015 Letter, at 4 ("proposed policy would provide regulatory approval for anticompetitive tying of clearing and regulatory reporting services").

[358] CEA section 5b(c)(2)(N), 7 U.S.C.7a–1(c)(2)(N). DCO Core Principle N provides that unless necessary or appropriate to achieve the purposes of this Act, a derivatives clearing organization shall not—(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or (ii) impose any material anticompetitive burden.

[359] *See* CEA section 5b(c)(2)(A)(i), 7 U.S.C. 7a–1(c)(2)(A)(i); 17 CFR 39.10(a).

[360] Currently, CME Rule 1001 provides that the CME Group DCO will report all swaps resulting from its clearing to the CME Group SDR. After consideration pursuant to section 5c(c)(5) of the CEA and Commission regulation 40.5, the Commission granted CME's request for approval of Rule 1001 on March 6, 2013. *See* Statement of the Commission ("Statement"), available at *http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/statementofthecommission.pdf.* In granting the request for approval, the Commission determined, among other things, that under the then-current facts and circumstances Rule 1001 was not inconsistent with DCO Core Principle N. As the Statement expressly stated, however, the Commission's determination was based on the "present facts and circumstances," and that "CME has a continuing obligation to implement its Rule 1001 in a manner consistent with the Commission's regulations and the DCO Core Principles, including Core Principle N, based on the relevant facts and circumstances as they may change over time." Statement at 12. The Commission expects that DCOs will continue to monitor industry circumstances and amend their rules and conduct as necessary to remain in statutory and regulatory compliance as industry conditions evolve. More specifically in the context of compliance with Core Principle N, the Commission expects such ongoing monitoring to include attention to the competitive impact of DCO rules and conduct in appropriately defined relevant antitrust product and geographic markets, and assessment of whether particular DCO rules or conduct transgress antitrust laws, including Sherman Act sections 1 and 2, 15 U.S.C. 1 and 2.

[361] *See* JBA Oct. 30, 2015 Letter, at 2 (requesting delayed implementation); DTCC Oct. 30, 2015 Letter, at 9 (requesting that all changes to PET fields be required prospectively only, and not for existing swaps; requesting implementation time of 6 months); ISDA Oct. 30, 2015 Letter, at 12 (requesting delayed implementation, but deferring to SDRs and DCOs on timeline for such implementation); LCH Oct.30, 2015 Letter, at 2 (recommending at least 12 months for DCOs and SDRs to coordinate on solution for reporting).

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market must report all primary economic terms data for the swap, as defined in § 45.1, as soon as technologically practicable after execution of the swap. If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, the swap execution facility or designated contract market must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after execution of the swap.

(b) *Off-facility swaps subject to the clearing requirement.* For all off-facility swaps subject to the clearing requirement under part 50 of this chapter, except for those off-facility swaps for which an exception to, or exemption from, the clearing requirement has been elected under part 50 of this chapter, and those off-facility swaps covered by CEA section 2(a)(13)(C)(iv), required swap creation data must be reported as provided in paragraph (b) of this section.

(1) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (b)(1)(i) or (ii) of this section.

(i) If the reporting counterparty is a swap dealer or a major swap participant, the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than 15 minutes after execution.

(ii) If the reporting counterparty is a non-SD/MSP counterparty, the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than one business hour after execution.

(2) [Reserved]

(c) *Off-facility swaps not subject to the clearing requirement, with a swap dealer or major swap participant reporting counterparty.* For all off-facility swaps not subject to the clearing requirement under part 50 of this chapter, all off-facility swaps for which an exception to, or an exemption from, the clearing requirement has been elected under part 50 of this chapter, and all off-facility swaps covered by CEA section 2(a)(13)(C)(iv), for which a swap dealer or major swap participant is the reporting counterparty, required swap creation data must be reported as provided in paragraph (c) of this section.

(1) *Credit, equity, foreign exchange, and interest rate swaps.* For each such credit swap, equity swap, foreign exchange instrument, or interest rate swap:

(i) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (c)(1)(i)(A) or (B) of this section.

(A) If the non-reporting counterparty is a swap dealer, a major swap participant, or a non-SD/MSP counterparty that is a financial entity as defined in CEA section 2(h)(7)(C), or if the non-reporting counterparty is a non-SD/MSP counterparty *that is not a financial entity as defined in CEA section 2(h)(7)(C)* and verification of primary economic terms occurs electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than 30 minutes after execution.

(B) If the non-reporting counterparty is a non-SD/MSP counterparty *that is not a financial entity as defined in CEA section 2(h)(7)(C),* and if verification of primary economic terms does not occur electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than 30 minutes after execution.

(ii) If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than: 30 minutes after confirmation if confirmation occurs electronically; or 24 business hours after confirmation if confirmation does not occur electronically.

(2) *Other commodity swaps.* For each such other commodity swap:

(i) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (c)(2)(i)(A) or (B) of this section.

(A) If the non-reporting counterparty is a swap dealer, a major swap participant, or a non-SD/MSP counterparty that is a financial entity as defined in CEA section 2(h)(7)(C), or if the non-reporting counterparty is a non-SD/MSP counterparty *that is not a financial entity as defined in CEA section 2(h)(7)(C)* and verification of primary economic terms occurs electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than two hours after execution.

(B) If the non-reporting counterparty is a non-SD/MSP counterparty *that is not a financial entity as defined in CEA section 2(h)(7)(C),* and if verification of primary economic terms does not occur electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than two hours after execution.

(ii) If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than: 30 Minutes after confirmation if confirmation occurs electronically; or 24 business hours after confirmation if confirmation does not occur electronically.

(d) *Off-facility swaps not subject to the clearing requirement, with a non-SD/MSP reporting counterparty.* For all off-facility swaps not subject to the clearing requirement under part 50 of this chapter, all off-facility swaps for which an exception to, or an exemption from, the clearing requirement has been elected under part 50 of this chapter, and all off-facility swaps covered by CEA section 2(a)(13)(C)(iv), in all asset classes, for which a non-SD/MSP counterparty is the reporting counterparty, required swap creation data must be reported as provided in paragraph (d) of this section.

(1) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, as soon as technologically practicable after execution, but no later than 24 business hours after execution.

(2) If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than 24 business hours after confirmation.

(e) *Clearing swaps.* As soon as technologically practicable after acceptance of an original swap by a derivatives clearing organization for clearing, or as soon as technologically practicable after execution of a clearing swap that does not replace an original swap, the derivatives clearing organization, as reporting counterparty, must report all required swap creation data for the clearing swap. Required swap creation data for clearing swaps must include all confirmation data and all primary economic terms data, as those terms are defined in § 45.1 and as included in appendix 1 to this part.

(f) *Allocations.* For swaps involving allocation, required swap creation data shall be reported to a single swap data repository as follows.

(1) *Initial swap between reporting counterparty and agent.* The initial swap transaction between the reporting counterparty and the agent shall be reported as required by § 45.3(a) through (d). A unique swap identifier for the initial swap transaction must be created as provided in § 45.5.

(2) *Post-allocation swaps*—(i) *Duties of the agent.* In accordance with this section, the agent shall inform the reporting counterparty of the identities of the reporting counterparty's actual counterparties resulting from allocation, as soon as technologically practicable after execution, but not later than eight business hours after execution.

(ii) *Duties of the reporting counterparty.* The reporting counterparty must report all required swap creation data for each swap resulting from allocation to the same swap data repository to which the initial swap transaction is reported as soon as technologically practicable after it is informed by the agent of the identities of its actual counterparties. The reporting counterparty must create a unique swap identifier for each such swap as required in § 45.5.

(iii) *Duties of the swap data repository.* The swap data repository to which the initial swap transaction and the post-allocation swaps are reported must map together the unique swap identifiers of the initial swap transaction and of each of the post-allocation swaps.

(g) *Multi-asset swaps.* For each multi-asset swap, required swap creation data and required swap continuation data shall be reported to a single swap data repository that accepts swaps in the asset class treated as the primary asset class involved in the swap by the swap execution facility, designated contract market, or reporting counterparty making the first report of required swap creation data pursuant to this section. The registered entity or reporting counterparty making the first report of required swap creation data pursuant to this section shall report all primary economic terms for each asset class involved in the swap.

(h) *Mixed swaps.* (1) For each mixed swap, required swap creation data and required swap continuation data shall be reported to a swap data repository registered with the Commission and to a security-based swap data repository registered with the Securities and Exchange Commission. This requirement may be satisfied by reporting the mixed swap to a swap data repository or security-based swap data repository registered with both Commissions.

(2) The registered entity or reporting counterparty making the first report of required swap creation data pursuant to this section shall ensure that the same unique swap identifier is recorded for the swap in both the swap data repository and the security-based swap data repository.

(i) *International swaps.* For each international swap, the reporting counterparty shall report as soon as practicable to the swap data repository the identity of the non-U.S. trade repository not registered with the Commission to which the swap is also reported and the swap identifier used by the non-U.S. trade repository to identify the swap. If necessary, the reporting counterparty shall obtain this information from the non-reporting counterparty.

(j) *Choice of SDR.* The entity with the obligation to choose the swap data repository to which all required swap creation data for the swap is reported shall be the entity that is required to make the first report of all data pursuant to this section, as follows:

(1) For swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall choose the swap data repository;

(2) For all other swaps, the reporting counterparty, as determined in § 45.8, shall choose the swap data repository.

§ 45.4 [Amended]

■ 4. Effective June 27, 2016, remove § 45.4 (b)(2)(ii).

■ 5. Effective July 27, 2016, revise § 45.4 to read as follows:

§ 45.4 Swap data reporting: Continuation data.

Registered entities and swap counterparties must report required swap continuation data electronically to a swap data repository as set forth in this section and in the manner provided in § 45.13(b). The rules governing acceptance and recording of such data by a swap data repository are set forth in § 49.10 of this chapter. The reporting obligations of registered entities and swap counterparties with respect to swaps executed prior to the applicable compliance date and in existence on or after July 21, 2010, the date of enactment of the Dodd-Frank Act, are set forth in part 46 of this chapter. This section and § 45.3 establish the general swap data reporting obligations of swap dealers, major swap participants, non-SD/MSP counterparties, swap execution facilities, designated contract markets, and derivatives clearing organizations to report swap data to a swap data repository. In addition to the reporting obligations set forth in this section and in § 45.3, registered entities and swap counterparties are subject to other reporting obligations set forth in this chapter, including, without limitation, the following: Swap dealers, major swap participants, and non-SD/MSP counterparties are also subject to the reporting obligations with respect to corporate affiliations reporting set forth in § 45.6; swap execution facilities, designated contract markets, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to real time reporting of swap data set forth in part 43 of this chapter; and, where applicable, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to large traders set forth in parts 17 and 18 of this chapter.

(a) *Continuation data reporting method generally.* For each swap, regardless of asset class, reporting counterparties and derivatives clearing organizations required to report swap continuation data must do so in a manner sufficient to ensure that all data in the swap data repository concerning the swap remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap. Reporting entities and counterparties fulfill this obligation by reporting either life cycle event data or state data for the swap within the applicable deadlines set forth in this section. Reporting counterparties and derivatives clearing organizations required to report swap continuation data for a swap may fulfill their obligation to report either life cycle event data or state data by reporting:

(1) Life cycle event data to a swap data repository that accepts only life cycle event data reporting;

(2) State data to a swap data repository that accepts only state data reporting; or

(3) Either life cycle event data or state data to a swap data repository that accepts both life cycle event data and state data reporting.

(b) *Continuation data reporting for clearing swaps.* For all clearing swaps, required continuation data must be reported as provided in this section.

(1) *Life cycle event data or state data reporting.* The derivatives clearing organization, as reporting counterparty, must report to the swap data repository either:

(i) All life cycle event data for the swap, reported on the same day that any life cycle event occurs with respect to the swap; or

(ii) All state data for the swap, reported daily.

(2) *Valuation data reporting.* Valuation data for the swap must be reported by the derivatives clearing organization, as reporting counterparty, daily.

(c) *Continuation data reporting for original swaps.* For all original swaps, required continuation data, including terminations, must be reported to the swap data repository to which the swap that was accepted for clearing was reported pursuant to § 45.3(a) through (d) in the manner provided in § 45.13(b) and in this section, and must be accepted and recorded by such swap data repository as provided in § 49.10 of this chapter.

(1) *Life cycle event data or state data reporting.* The derivatives clearing organization that accepted the swap for clearing must report to the swap data repository either:

(i) All life cycle event data for the swap, reported on the same day that any life cycle event occurs with respect to the swap; or

(ii) All state data for the swap, reported daily.

(2) In addition to all other necessary continuation data fields, life cycle event data and state data must include all of the following:

(i) The legal entity identifier of the swap data repository to which all required swap creation data for each clearing swap was reported by the derivatives clearing organization pursuant to § 45.3(e);

(ii) The unique swap identifier of the original swap that was replaced by the clearing swaps; and

(iii) The unique swap identifier of each clearing swap that replaces a particular original swap.

(d) *Continuation data reporting for uncleared swaps.* For all swaps that are not cleared by a derivatives clearing organization, including swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the reporting counterparty must report all required swap continuation data as provided in this section.

(1) *Life cycle event data or state data reporting.* The reporting counterparty for the swap must report to the swap data repository either all life cycle event data for the swap or all state data for the swap, within the applicable deadline set forth in paragraphs (d)(1)(i) or (ii) of this section.

(i) If the reporting counterparty is a swap dealer or major swap participant:

(A) Life cycle event data must be reported on the same day that any life cycle event occurs, with the sole exception that life cycle event data relating to a corporate event of the non-reporting counterparty must be reported no later than the second business day after the day on which such event occurs.

(B) State data must be reported daily.

(ii) If the reporting counterparty is a non-SD/MSP counterparty:

(A) Life cycle event data must be reported no later than the end of the first business day following the date of any life cycle event; with the sole exception that life cycle event data relating to a corporate event of the non-reporting counterparty must be reported no later than the end of the second business day following such event.

(B) State data must be reported daily.

(2) *Valuation data reporting.* Valuation data for the swap must be reported by the reporting counterparty for the swap as follows:

(i) If the reporting counterparty is a swap dealer or major swap participant, the reporting counterparty must report all valuation data for the swap, daily.

(ii) If the reporting counterparty is a non-SD/MSP counterparty, the reporting counterparty must report the current daily mark of the transaction as of the last day of each fiscal quarter. This report must be transmitted to the swap data repository within 30 calendar days of the end of each fiscal quarter. If a daily mark of the transaction is not available for the swap, the reporting counterparty satisfies this requirement by reporting the current valuation of the swap recorded on its books in accordance with applicable accounting standards.

■ 6. Revise § 45.5 to read as follows:

§ 45.5 Unique swap identifiers.

Each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to this part by the use of a unique swap identifier, which shall be created, transmitted, and used for each swap as provided in paragraphs (a) through (f) of this section.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall create and transmit a unique swap identifier as provided in paragraphs (a)(1) and (2) of this section.

(1) *Creation.* The swap execution facility or designated contract market shall generate and assign a unique swap identifier at, or as soon as technologically practicable following, the time of execution of the swap, and prior to the reporting of required swap creation data. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the swap execution facility or designated contract market by the Commission for the purpose of identifying the swap execution facility or designated contract market with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that swap by the automated systems of the swap execution facility or designated contract market, which shall be unique with respect to all such codes generated and assigned by that swap execution facility or designated contract market.

(2) *Transmission.* The swap execution facility or designated contract market shall transmit the unique swap identifier electronically as follows:

(i) To the swap data repository to which the swap execution facility or designated contract market reports required swap creation data for the swap, as part of that report;

(ii) To each counterparty to the swap, as soon as technologically practicable after execution of the swap;

(iii) To the derivatives clearing organization, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the derivatives clearing organization for clearing purposes.

(b) *Off-facility swaps with a swap dealer or major swap participant reporting counterparty.* For each off-facility swap where the reporting counterparty is a swap dealer or major swap participant, the reporting counterparty shall create and transmit a unique swap identifier as provided in paragraphs (b)(1) and (2) of this section.

(1) *Creation.* The reporting counterparty shall generate and assign a unique swap identifier as soon as technologically practicable after execution of the swap and prior to both the reporting of required swap creation data and the transmission of data to a derivatives clearing organization if the swap is to be cleared. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the swap dealer or major swap participant by the Commission at the time of its registration as such, for the purpose of identifying the swap dealer or major swap participant with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that swap by the automated systems of the swap dealer or major swap participant, which shall be unique with respect to all such codes generated and assigned by that swap dealer or major swap participant.

(2) *Transmission.* The reporting counterparty shall transmit the unique swap identifier electronically as follows:

(i) To the swap data repository to which the reporting counterparty reports required swap creation data for the swap, as part of that report;

(ii) To the non-reporting counterparty to the swap, as soon as technologically practicable after execution of the swap; and

(iii) To the derivatives clearing organization, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the derivatives clearing organization for clearing purposes.

(c) *Off-facility swaps with a non-SD/MSP reporting counterparty.* For each off-facility swap for which the reporting counterparty is a non-SD/MSP counterparty, the swap data repository to which primary economic terms data is reported shall create and transmit a unique swap identifier as provided in paragraphs (c)(1) and (2) of this section.

(1) *Creation.* The swap data repository shall generate and assign a unique swap identifier as soon as technologically practicable following receipt of the first report of required swap creation data concerning the swap. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the swap data repository by the Commission at the time of its registration as such, for the purpose of identifying the swap data repository with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that swap by the automated systems of the swap data repository, which shall be unique with respect to all such codes generated and assigned by that swap data repository.

(2) *Transmission.* The swap data repository shall transmit the unique swap identifier electronically as follows:

(i) To the counterparties to the swap, as soon as technologically practicable following creation of the unique swap identifier; and

(ii) To the derivatives clearing organization, if any, to which the swap is submitted for clearing, as soon as technologically practicable following creation of the unique swap identifier.

(d) *Clearing swaps.* For each clearing swap, the derivatives clearing organization that is a counterparty to such swap shall create and transmit a unique swap identifier as provided in paragraphs (d)(1) and (2) of this section.

(1) *Creation.* The derivatives clearing organization shall generate and assign a unique swap identifier upon, or as soon as technologically practicable after, acceptance of an original swap by the derivatives clearing organization for clearing or execution of a clearing swap that does not replace an original swap, and prior to the reporting of required swap creation data for the clearing swap. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the derivatives clearing organization by the Commission for the purpose of identifying the derivatives clearing organization with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that clearing swap by the automated systems of the derivatives clearing organization, which shall be unique with respect to all such codes generated and assigned by that derivatives clearing organization.

(2) *Transmission.* The derivatives clearing organization shall transmit the unique swap identifier electronically as follows:

(i) To the swap data repository to which the derivatives clearing organization reports required swap creation data for the clearing swap, as part of that report; and

(ii) To its counterparty to the clearing swap, as soon as technologically practicable after acceptance of a swap by the derivatives clearing organization for clearing or execution of a clearing swap that does not replace an original swap.

(e) *Allocations.* For swaps involving allocation, unique swap identifiers shall be created and transmitted as follows.

(1) *Initial swap between reporting counterparty and agent.* The unique swap identifier for the initial swap transaction between the reporting counterparty and the agent shall be created as required by paragraphs (a) through (c) of this section, and shall be transmitted as follows:

(i) If the unique swap identifier is created by a swap execution facility or designated contract market, the swap execution facility or designated contract market must include the unique swap identifier in its swap creation data report to the swap data repository, and must transmit the unique identifier to the reporting counterparty and to the agent.

(ii) If the unique swap identifier is created by the reporting counterparty, the reporting counterparty must include the unique swap identifier in its swap creation data report to the swap data repository, and must transmit the unique identifier to the agent.

(2) *Post-allocation swaps.* The reporting counterparty must create a unique swap identifier for each of the individual swaps resulting from allocation, as soon as technologically practicable after it is informed by the agent of the identities of its actual counterparties, and must transmit each such unique swap identifier to:

(i) The non-reporting counterparty for the swap in question.

(ii) The agent.

(iii) The derivatives clearing organization, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the derivatives clearing organization for clearing purposes.

(f) *Use.* Each registered entity or swap counterparty subject to the jurisdiction of the Commission shall include the unique swap identifier for a swap in all of its records and all of its swap data reporting concerning that swap, from the time it creates or receives the unique swap identifier as provided in this section, throughout the existence of the swap and for as long as any records are required by the CEA or Commission regulations to be kept by that registered entity or counterparty concerning the swap, regardless of any life cycle events or any changes to state data concerning the swap, including, without limitation, any changes with respect to the counterparties to or the ownership of the swap. This requirement shall not prohibit the use by a registered entity or swap counterparty in its own records of any additional identifier or identifiers internally generated by the automated systems of the registered entity or swap counterparty, or the reporting to a swap data repository, the Commission, or another regulator of such internally generated identifiers in addition to the reporting of the unique swap identifier.

■ 7. Revise § 45.8 to read as follows:

§ 45.8 Determination of which counterparty must report.

The determination of which counterparty is the reporting counterparty for all swaps, except clearing swaps, shall be made as provided in paragraphs (a) through (h) of this section. The determination of which counterparty is the reporting counterparty for all clearing swaps shall be made as provided in paragraph (i) of this section.

(a) If only one counterparty is a swap dealer, the swap dealer shall be the reporting counterparty.

(b) If neither counterparty is a swap dealer, and only one counterparty is a major swap participant, the major swap participant shall be the reporting counterparty.

(c) If both counterparties are non-SD/MSP counterparties, and only one counterparty is a financial entity as defined in CEA section 2(h)(7)(C), the counterparty that is a financial entity shall be the reporting counterparty.

(d) If both counterparties are swap dealers, or both counterparties are major swap participants, or both counterparties are non-SD/MSP counterparties that are financial entities as defined in CEA section 2(h)(7)(C), or both counterparties are non-SD/MSP counterparties and neither counterparty is a financial entity as defined in CEA section 2(h)(7)(C):

(1) For a swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the counterparties shall agree which counterparty shall be the reporting counterparty.

(2) For an off-facility swap, the counterparties shall agree as one term of their swap which counterparty shall be the reporting counterparty.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, if both counterparties to a swap are non-SD/MSP counterparties and only one counterparty is a U.S. person, that counterparty shall be the reporting counterparty.

(f) Notwithstanding the provisions of paragraphs (a) through (e) of this section, if neither counterparty to a swap is a U.S. person, but the swap is executed on or pursuant to the rules of a swap execution facility or designated contract market or otherwise executed in the United States, or is cleared by a derivatives clearing organization:

(1) For such a swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the counterparties shall agree which counterparty shall be the reporting counterparty.

(2) For an off-facility swap, the counterparties shall agree as one term of their swap which counterparty shall be the reporting counterparty.

(g) If a reporting counterparty selected pursuant to paragraphs (a) through (f) of this section ceases to be a counterparty to a swap due to an assignment or novation, the reporting counterparty for reporting of required swap continuation data following the assignment or novation shall be selected from the two current counterparties as provided in paragraphs (g)(1) through (4) of this section.

(1) If only one counterparty is a swap dealer, the swap dealer shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(2) If neither counterparty is a swap dealer, and only one counterparty is a major swap participant, the major swap participant shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(3) If both counterparties are non-SD/MSP counterparties, and only one counterparty is a U.S. person, that counterparty shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(4) In all other cases, the counterparty that replaced the previous reporting counterparty by reason of the assignment or novation shall be the reporting counterparty, unless otherwise agreed by the counterparties.

(h) For all swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the rules of the swap execution facility or designated contract market must require each swap counterparty to provide sufficient information to the swap execution facility or designated contract market to enable the swap execution facility or designated contract market to report all swap creation data as provided in this part.

(1) To achieve this, the rules of the swap execution facility or designated contract market must require each market participant placing an order with respect to any swap traded on the swap execution facility or designated contract market to include in the order, without limitation:

(i) The legal entity identifier of the market participant placing the order.

(ii) A yes/no indication of whether the market participant is a swap dealer with respect to the product with respect to which the order is placed.

(iii) A yes/no indication of whether the market participant is a major swap participant with respect to the product with respect to which the order is placed.

(iv) A yes/no indication of whether the market participant is a financial entity as defined in CEA section 2(h)(7)(C).

(v) A yes/no indication of whether the market participant is a U.S. person.

(vi) If applicable, an indication that the market participant will elect an exception to, or an exemption from, the clearing requirement under part 50 of this chapter for any swap resulting from the order.

(vii) If the swap will be allocated:

(A) An indication that the swap will be allocated.

(B) The legal entity identifier of the agent.

(C) An indication of whether the swap is a post-allocation swap.

(D) If the swap is a post-allocation swap, the unique swap identifier of the initial swap transaction between the reporting counterparty and the agent.

(2) To achieve this, the swap execution facility or designated contract market must use the information obtained pursuant to paragraph (h)(1) of this section to identify the counterparty that is the reporting counterparty pursuant to the CEA and this section.

(i) *Clearing swaps.* Notwithstanding the provisions of paragraphs (a) through (h) of this section, if the swap is a clearing swap, the derivatives clearing organization that is a counterparty to such swap shall be the reporting counterparty and shall fulfill all reporting counterparty obligations for such swap.

■ 8. Revise § 45.10 to read as follows:

§ 45.10 Reporting to a single swap data repository.

All swap data for a given swap, which shall include all swap data required to be reported pursuant to parts 43 and 45 of this chapter, must be reported to a single swap data repository, which shall be the swap data repository to which the first report of required swap creation data is made pursuant to this part.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* To ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45 of this chapter, for a swap executed on or pursuant to the rules of a swap execution facility or designated contract market is reported to a single swap data repository:

(1) The swap execution facility or designated contract market that reports required swap creation data as required by § 45.3 shall report all such data to a single swap data repository. As soon as technologically practicable after execution, the swap execution facility or designated contract market shall transmit to both counterparties to the swap, and to the derivatives clearing organization, if any, that will clear the swap, both:

(i) The identity of the swap data repository to which required swap creation data is reported by the swap execution facility or designated contract market; and

(ii) The unique swap identifier for the swap, created pursuant to § 45.5.

(2) Thereafter, all required swap creation data and all required swap continuation data reported for the swap reported by any registered entity or counterparty shall be reported to that same swap data repository (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(b) *Off-facility swaps with a swap dealer or major swap participant reporting counterparty.* To ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45 of this chapter, for off-facility swaps with a swap dealer or major swap participant reporting counterparty is reported to a single swap data repository:

(1) If the reporting counterparty reports primary economic terms data to a swap data repository as required by § 45.3:

(i) The reporting counterparty shall report primary economic terms data to a single swap data repository.

(ii) As soon as technologically practicable after execution, but no later than as required pursuant to § 45.3, the reporting counterparty shall transmit to the other counterparty to the swap both the identity of the swap data repository to which primary economic terms data is reported by the reporting counterparty, and the unique swap identifier for the swap created pursuant to § 45.5.

(iii) If the swap will be cleared, the reporting counterparty shall transmit to the derivatives clearing organization at the time the swap is submitted for clearing both the identity of the swap data repository to which primary economic terms data is reported by the reporting counterparty, and the unique swap identifier for the swap created pursuant to § 45.5.

(2) Thereafter, all required swap creation data and all required swap continuation data reported for the swap, by any registered entity or counterparty, shall be reported to the swap data repository to which swap data has been reported pursuant to paragraph (b)(1) or (2) of this section (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(c) *Off-facility swaps with a non-SD/MSP reporting counterparty.* To ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45 of this chapter, for such swaps is reported to a single swap data repository:

(1) If the reporting counterparty reports primary economic terms data to a swap data repository as required by § 45.3:

(i) The reporting counterparty shall report primary economic terms data to a single swap data repository.

(ii) As soon as technologically practicable after execution, but no later than as required pursuant to § 45.3, the reporting counterparty shall transmit to the other counterparty to the swap the identity of the swap data repository to which primary economic terms data was reported by the reporting counterparty.

(iii) If the swap will be cleared, the reporting counterparty shall transmit to the derivatives clearing organization at the time the swap is submitted for clearing the identity of the swap data repository to which primary economic terms data was reported by the reporting counterparty.

(2) The swap data repository to which the swap is reported as provided in paragraph (c) of this section shall transmit the unique swap identifier created pursuant to § 45.5 to both counterparties and to the derivatives clearing organization, if any, as soon as technologically practicable after creation of the unique swap identifier.

(3) Thereafter, all required swap creation data and all required swap continuation data reported for the swap, by any registered entity or counterparty, shall be reported to the swap data repository to which swap data has been reported pursuant to paragraph (c)(1) of this section (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(d) *Clearing swaps.* To ensure that all swap data for a given clearing swap, and for clearing swaps that replace a particular original swap or that are created upon execution of the same transaction and that do not replace an original swap, is reported to a single swap data repository:

(1) The derivatives clearing organization that is a counterparty to such clearing swap shall report all required swap creation data for that clearing swap to a single swap data repository. As soon as technologically practicable after acceptance of an original swap by a derivatives clearing organization for clearing or execution of a clearing swap that does not replace an original swap, the derivatives clearing organization shall transmit to the counterparty to each clearing swap the legal entity identifier of the swap data repository to which the derivatives clearing organization reported the required swap creation data for that clearing swap.

(2) Thereafter, all required swap creation data and all required swap continuation data reported for that clearing swap shall be reported by the derivatives clearing organization to the swap data repository to which swap data has been reported pursuant to paragraph (d)(1) of this section (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(3) For clearing swaps that replace a particular original swap, and for equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, the derivatives clearing organization shall report all required swap creation data and all required swap continuation data for such clearing swaps to a single swap data repository.

■ 9. Revise Appendix 1 to part 45 to read as follows:

Appendix 1 to Part 45—Tables of Minimum Primary Economic Terms Data

EXHIBIT A—MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS

[Enter N/A for fields that are not applicable]

Data categories and fields for all swaps	Comment
Asset Class	Field values: Credit, equity, FX, interest rates, other commodities.
The Unique Swap Identifier for the swap	As provided in § 45.5.
The Legal Entity Identifier of the reporting counterparty	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a U.S. person	Yes/No.
An indication that the swap will be allocated	Yes/No.
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent.	As provided in § 45.6, or substitute identifier for a natural person.
An indication that the swap is a post-allocation swap	Yes/No.
If the swap is a post-allocation swap, the unique swap identifier of the initial swap transaction between the reporting counterparty and the agent.	As provided in § 45.5.
The Legal Entity Identifier of the non-reporting party	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the non-reporting counterparty is a U.S. person.	Yes/No.
The Unique Product Identifier assigned to the swap	As provided in § 45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable.
For a multi-asset class swap, an indication of the primary asset class	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: Credit, equity, FX, interest rates, other commodities.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: Credit, equity, FX, interest rates, other commodities.
An indication that the swap is a mixed swap	Field values: Yes, Not applicable.
For a mixed swap reported to two non-dually- registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported.	Field value: LEI of the other SDR to which the swap is or will be reported.
An indication of the counterparty purchasing protection	Field values: LEI, or substitute identifier for a natural person.
An indication of the counterparty selling protection	Field values: LEI, or substitute identifier for a natural person.
Information identifying the reference entity	The entity that is the subject of the protection being purchased and sold in the swap. Field values: LEI, or substitute identifier for a natural person.
Contract type	*E.g.,* swap, swaption, forward, option, basis swap, index swap, basket swap.
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a block trade or large notional swap.
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UTC").
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or "off-facility" if not so executed.
Start date	The date on which the swap starts or goes into effect.
Maturity, termination or end date	The date on which the swap expires.
The price	*E.g.,* strike price, initial price, spread.
The notional amount, and the currency in which the notional amount is expressed.	
The amount and currency (or currencies) of any up-front payment	

EXHIBIT A—MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS—Continued

[Enter N/A for fields that are not applicable]

Data categories and fields for all swaps	Comment
Payment frequency of the reporting counterparty	A description of the payment stream of the reporting counterparty, *e.g.,* coupon.
Payment frequency of the non-reporting counterparty	A description of the payment stream of the non-reporting counterparty, *e.g.,* coupon.
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using UTC, as recorded by an automated system where available, or as recorded manually where an automated system is not available.
Clearing indicator	Yes/No indication of whether the swap will be submitted for clearing to a derivatives clearing organization.
Clearing venue	LEI of the derivatives clearing organization.
If the swap will not be cleared, an indication of whether an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier for natural person.
Clearing exception or exemption type	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.	Use as many fields as required to report each such term.

EXHIBIT A—MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as "USI" field above).
Original swap USI	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR	LEI of SDR to which the original swap was reported.
Clearing member LEI	LEI of Clearing member.
Clearing member client account	Clearing member client account number.
Origin (house or customer)	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp	The date and time at which the DCO received the original swap for clearing, expressed using UTC.
Clearing acceptance timestamp	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

EXHIBIT B—MINIMUM PRIMARY ECONOMIC TERMS DATA—FOREIGN EXCHANGE TRANSACTIONS (OTHER THAN CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comment
Asset Class	Field values: Credit, equity, FX, interest rates, other commodities.
The Unique Swap Identifier for the swap	As provided in § 45.5.
The Legal Entity Identifier of the reporting counterparty	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a U.S. person	Yes/No.
An indication that the swap will be allocated	Yes/No.
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent.	As provided in § 45.6, or substitute identifier for a natural person.
An indication that the swap is a post-allocation swap	Yes/No.

EXHIBIT B—MINIMUM PRIMARY ECONOMIC TERMS DATA—FOREIGN EXCHANGE TRANSACTIONS (OTHER THAN CROSS-CURRENCY SWAPS)—Continued

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comment
If the swap is a post-allocation swap, the unique swap identifier of the initial swap transaction between the reporting counterparty and the agent.	As provided in § 45.5.
The Legal Entity Identifier of the non-reporting party	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the non-reporting counterparty is a U.S. person.	Yes/No.
The Unique Product Identifier assigned to the swap	As provided in § 45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable.
For a multi-asset class swap, an indication of the primary asset class	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: Credit, equity, FX, interest rates, other commodities.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: Credit, equity, FX, interest rates, other commodities.
An indication that the swap is a mixed swap	Field values: Yes, Not applicable.
For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported.	Field value: LEI of the other SDR to which the swap is or will be reported.
Contract type	*E.g.,* forward, non-deliverable forward (NDF), non- deliverable option (NDO), vanilla option, simple exotic option, complex exotic option.
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a block trade or large notional swap.
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UTC").
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or "off-facility" if not so executed.
Currency 1	ISO code.
Currency 2	ISO code.
Notional amount 1	For currency 1.
Notional amount 2	For currency 2.
Exchange rate	Contractual rate of exchange of the currencies.
Delivery type	Physical (deliverable) or cash (non-deliverable).
Settlement or expiration date	Settlement date, or for an option the contract expiration date.
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using Coordinated Universal Time ("UTC"), as recorded by an automated system where available, or as recorded manually where an automated system is not available.
Clearing indicator	Yes/No indication of whether the swap will be submitted for clearing to a derivatives clearing organization.
Clearing venue	LEI of the derivatives clearing organization.
If the swap will not be cleared, an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier, for a natural person.
Clearing exception or exemption type	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization	Is the trade collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the trade matched or affirmed by the counterparties in verifying the trade.	*E.g.,* for options, premium, premium currency, premium payment date; for non-deliverable trades, settlement currency, valuation (fixing) date; indication of the economic obligations of the counterparties. Use as many fields as required to report each such term.

EXHIBIT B—MINIMUM PRIMARY ECONOMIC TERMS DATA—FOREIGN EXCHANGE TRANSACTIONS (OTHER THAN CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as "USI" field above).
Original swap USI	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR	LEI of SDR to which the original swap was reported.
Clearing member LEI	LEI of Clearing member.
Clearing member client account	Clearing member client account number.
Origin (house or customer)	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp	The date and time at which the DCO received the original swap for clearing, expressed using UTC.
Clearing acceptance timestamp	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comment
Asset Class	Field values: Credit, equity, FX, interest rates, other commodities.
The Unique Swap Identifier for the swap	As provided in § 45.5.
The Legal Entity Identifier of the reporting counterparty	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a U.S. person	Yes/No.
An indication that the swap will be allocated	Yes/No.
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent.	As provided in § 45.6, or substitute identifier for a natural person.
An indication that the swap is a post-allocation swap	Yes/No.
If the swap is a post-allocation swap, the unique swap identifier of the initial swap transaction between the reporting counterparty and the agent.	As provided in § 45.5.
The Legal Entity Identifier of the non-reporting counterparty	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the non-reporting counterparty is a U.S. person.	Yes/No.
The Unique Product Identifier assigned to the swap	As provided in § 45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable.
For a multi-asset class swap, an indication of the primary asset class	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: Credit, equity, FX, interest rates, other commodities.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: Credit, equity, FX, interest rates, other commodities.
An indication that the swap is a mixed swap	Field values: Yes, Not applicable.

EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)—Continued

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comment
For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported.	Field value: LEI of the other SDR to which the swap is or will be reported.
Contract type	*E.g.,* swap, swaption, option, basis swap, index swap.
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a block trade or large notional swap.
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UTC").
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or "off-facility" if not so executed.
Start date	The date on which the swap starts or goes into effect.
Maturity, termination or end date	The date on which the swap expires or ends.
Day count convention.	
Notional amount (leg 1)	The current active notional amount.
Notional currency (leg 1)	ISO code.
Notional amount (leg 2)	The current active notional amount.
Notional currency (leg 2)	ISO code.
Payer (fixed rate)	Is the reporting party a fixed rate payer? Yes/No/Not applicable.
Payer (floating rate leg 1)	If two floating legs, the payer for leg 1.
Payer (floating rate leg 2)	If two floating legs, the payer for leg 2.
Direction	For swaps: Whether the principal is paying or receiving the fixed rate. For float-to-float and fixed-to-fixed swaps: Indicate N/A. For non-swap instruments and swaptions: Indicate the instrument that was bought or sold.
Option type	*E.g.,* put, call, straddle.
Fixed rate.	
Fixed rate day count fraction	*E.g.,* actual 360.
Floating rate payment frequency.	
Floating rate reset frequency.	
Floating rate index name/rate period	*E.g.,* USD-Libor-BBA.
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using UTC, as recorded by an automated system where available, or as recorded manually where an automated system is not available.
Clearing indicator	Yes/No indication of whether the swap will be submitted for clearing to a derivatives clearing organization.
Clearing venue	LEI of the derivatives clearing organization.
If the swap will not be cleared, an indication of whether an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier, for a natural person.
Clearing exception or exemption type	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.	*E.g.,* early termination option clause. Use as many fields as required to report each such term.

EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as "USI" field above).
Original swap USI	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR	LEI of SDR to which the original swap was reported.
Clearing member LEI	LEI of Clearing member.
Clearing member client account	Clearing member client account number.
Origin (house or customer)	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp	The date and time at which the DCO received the original swap for clearing, expressed using UTC.

EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)—Continued

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing acceptance timestamp	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS

[Enter N/A for fields that are not applicable]

Data field for all swaps	Comment
Asset Class	Field values: Credit, equity, FX, interest rates, other commodities.
The Unique Swap Identifier for the swap	As provided in § 45.5.
The Legal Entity Identifier of the reporting counterparty	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a U.S. person	Yes/No.
An indication that the swap will be allocated	Yes/No.
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent.	As provided in § 45.6, or substitute identifier for a natural person.
An indication that the swap is a post-allocation swap	Yes/No.
If the swap is a post-allocation swap, the unique swap identifier of the initial swap transaction between the reporting counterparty and the agent.	As provided in § 45.5.
The Legal Entity Identifier of the non-reporting party	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the non-reporting counterparty is a U.S. person.	Yes/No.
The Unique Product Identifier assigned to the swap	As provided in § 45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable.
For a multi-asset class swap, an indication of the primary asset class	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: Credit, equity, FX, interest rates, other commodities.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: Credit, equity, FX, interest rates, other commodities.
An indication that the swap is a mixed swap	Field values: Yes, Not applicable.
For a mixed swap reported to two non-dually- registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported.	Field value: LEI of the other SDR to which the swap is or will be reported.
Contract type	*E.g.,* swap, swaption, option, basis swap, index swap.
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a "block trade" or "large notional off-facility swap" as defined in part 43 of the CFTC's regulations.
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UTC"), as recorded by an automated system where available, or as recorded manually where an automated system is not available.

EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS—Continued

[Enter N/A for fields that are not applicable]

Data field for all swaps	Comment
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or "off-facility" if not so executed.
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using UTC, as recorded by an automated system where available, or as recorded manually where an automated system is not available.
Start date	The date on which the swap commences or goes into effect (*e.g.,* in physical oil, the pricing start date).
Maturity, termination, or end date	The date on which the swap expires or ends (*e.g.,* in physical oil, the pricing end date).
Buyer	The counterparty purchasing the product: (*E.g.,* the payer of the fixed price (for a swap), or the payer of the floating price on the underlying swap (for a put swaption), or the payer of the fixed price on the underlying swap (for a call swaption). Field values: LEI, if available, or substitute identifier, for a natural person.
Seller	The counterparty offering the product: (*E.g.,* the payer of the floating price (for a swap), the payer of the fixed price on the underlying swap (for a put swaption), or the payer of the floating price on the underlying swap (for a call swaption). Field values: LEI, or substitute identifier, for a natural person.
Quantity unit	The unit of measure applicable for the quantity on the swap. *E.g.,* barrels, bushels, gallons, pounds, tons.
Quantity	The amount of the commodity (the number of quantity units) quoted on the swap.
Quantity frequency	The rate at which the quantity is quoted on the swap. *E.g.,* hourly, daily, weekly, monthly.
Total quantity	The quantity of the commodity for the entire term of the swap.
Settlement method	Physical delivery or cash.
Price	The price of the swap. For options, the strike price.
Price unit	The unit of measure applicable for the price of the swap.
Price currency	ISO code.
Buyer pay index	The published price as paid by the buyer (if applicable). For swaptions, applies to the underlying swap.
Buyer pay averaging method	The averaging method used to calculate the index of the buyer pay index. For swaptions, applies to the underlying swap.
Seller pay index	The published price as paid by the seller (if applicable). For swaptions, applies to the underlying swap.
Seller pay averaging method	The averaging method used to calculate the index of the seller pay index. For swaptions, applies to the underlying swap.
Grade	If applicable, the grade of the commodity to be delivered, *e.g.,* the grade of oil or refined product.
Option type	Descriptor for the type of option transaction. *E.g.,* put, call, straddle.
Option style	*E.g.,* American, European, European Daily, European Monthly, Asian.
Option premium	The total amount paid by the option buyer.
Hours from through	For electric power, the hours of the day for which the swap is effective.
Hours from through time zone	For electric power, the time zone prevailing for the hours during which electricity is transmitted.
Days of week	For electric power, the profile applicable for the delivery of power.
Load type	For electric power, the load profile for the delivery of power.
Clearing indicator	Yes/No indication of whether the swap will be submitted for clearing to a derivatives clearing organization.
Clearing venue	LEI of the derivatives clearing organization.
If the swap will not be cleared, an indication of whether an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier, for a natural person.
Clearing exception or exemption type	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.	Use as many fields as required to report each such term.

EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as "USI" field above).
Original swap USI	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR	LEI of SDR to which the original swap was reported.
Clearing member LEI	LEI of Clearing member.
Clearing member client account	Clearing member client account number.
Origin (house or customer)	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp	The date and time at which the DCO received the original swap for clearing, expressed using UTC.
Clearing acceptance timestamp	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

Issued in Washington, DC, on June 14, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps—Commission Voting Summary and Chairman's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

Regular reporting of data on swaps is a key component of the swaps reforms that were agreed to by the G–20 leaders and codified in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Since taking office, a priority of mine has been to improve data quality and to simplify reporting obligations for market participants. I know that my fellow Commissioners Bowen and Giancarlo share this goal. That is why I am very pleased that today, the Commission has acted unanimously to improve the process for reporting data on cleared swaps.

This final rule will significantly enhance data quality and reduce reporting costs in a number of ways. It streamlines the reporting process to ensure there are not duplicate records of a swap, which can lead to double counting that can distort the data. It makes sure that accurate valuations of swaps are provided on an ongoing basis. And it eliminates some needless reporting requirements for swap dealers and major swap participants. This rule provides clarity and certainty in a number of areas, and will improve our ability to trace a swap through all phases of its lifecycle. Ultimately, it will provide us with a better picture of the swaps market, and enhance our ability to identify the buildup of risk that may pose a threat to the financial system.

Today's final rule reflects the largely positive feedback we received on our proposal, which was released in August, 2015. We very much appreciate the input that market participants have given us.

This effort is just one piece of our work to ensure accuracy and completeness in data reporting, to harmonize data standards, and to improve data quality, while avoiding excessive burdens and duplication. For example, our other efforts will include the development of technical specifications for the reporting of 120 priority data elements, which will lead to greater consistency and standardization in reporting. We are also leading international efforts on data harmonization, including the development of tools that will allow regulators to identify swaps and swap activity by product type and transaction type throughout the life of a swap.

I thank CFTC staff for their hard work on this rule, as well as the market participants who took the time to provide us feedback. And I also thank my fellow Commissioners Bowen and Giancarlo for their careful consideration and unanimous support for this measure.

[FR Doc. 2016–14414 Filed 6–24–16; 8:45 am]

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H.R. 812/P.L. 114–178
Indian Trust Asset Reform Act (June 22, 2016; 130 Stat. 432)

H.R. 1762/P.L. 114–179
To name the Department of Veterans Affairs community-based outpatient clinic in The Dalles, Oregon, as the "Loren R. Kaufman VA Clinic". (June 22, 2016; 130 Stat. 444)

H.R. 2137/P.L. 114–180
Federal Law Enforcement Self-Defense and Protection Act of 2015 (June 22, 2016; 130 Stat. 445)

H.R. 2212/P.L. 114–181

To take certain Federal lands located in Lassen County, California, into trust for the benefit of the Susanville Indian Rancheria, and for other purposes. (June 22, 2016; 130 Stat. 447)

H.R. 2576/P.L. 114–182

Frank R. Lautenberg Chemical Safety for the 21st Century Act (June 22, 2016; 130 Stat. 448)

S. 2276/P.L. 114–183

Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (June 22, 2016; 130 Stat. 514)

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